

1 REPORTER'S RECORD  
2 VOLUME 7 OF 55  
3 TRIAL COURT CAUSE NO. 1184294D  
4 COURT OF APPEALS NO. AP-76,596  
5  
6 STATE OF TEXAS ) ( IN THE 432ND JUDICIAL  
7 ) (  
8 VS. ) (  
9 ) (  
10 DISTRICT COURT OF  
11 ) (  
12 JOHN WILLIAM HUMMEL ) ( TARRANT COUNTY, TEXAS  
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HEARING ON MOTIONS TO SUPPRESS

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16 On the 19th day of January, 2011, the  
17 following proceedings came on to be heard in the  
18 above-entitled and -numbered cause before the Honorable  
19 Ruben Gonzalez, Jr., Judge Presiding, held in Fort  
20 Worth, Tarrant County, Texas:

21 Proceedings reported by machine shorthand.

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ANGIE TAYLOR, CSR, RPR  
Official Court Reporter  
432nd DISTRICT COURT

*ORIGINAL*

A P P E A R A N C E S

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PROCEEDINGS

(January 19, 2011 ~ 9:06 a.m.)

(Open court, Defendant present)

THE COURT: We're on back on the record.

This is in the State of Texas versus John Hummel case.

Are both sides ready to proceed in the second day?

MR. BRISSETTE: The State's ready, Your Honor.

MR. MOORE: Yes, we're ready, Judge.

THE COURT: Mr. Brissette, I believe the last time we ended was the video was being played. Are you ready to resume the play of the video?

MR. BRISSETTE: I believe so, Your Honor. That would be State's PT-37.

THE COURT: Thank you.

MR. BRISSETTE: Judge, with the recess last time with the DVD, it's put it back to the beginning. We need to move forward in time for you. I guess we'll try to catch where we were in the break. There's no counter on the actual DVD for us at this time from the original evidence.

THE COURT: I understand.

(State's Pretrial Exhibit No. 37 published)

THE COURT: Let's go ahead and take a

6

15-minute break. Thank you.

(Recess from 10:45 a.m. to 11:13 a.m.)

(Open court, Defendant present)

THE COURT: We're back on the record.

Both sides ready to proceed?

MR. BRISSETTE: The State's ready.

MR. MOORE: Yes, Judge.

THE COURT: All right, Mr. Brissette. You may continue.

JASON CHARBONNET,  
having been previously first duly sworn, testified as follows:

DIRECT EXAMINATION (Cont'd)

BY MR. BRISSETTE:

Q. Detective, we just had an opportunity, through the last part of last night and this morning, to watch your interview, the trio of investigators from Texas interview with Mr. Hummel in San Diego; is that correct?

A. Yes.

Q. At some point in the early morning hours of that Monday morning, did the three of you retire to a hotel to sleep for awhile?

A. Yes.

Q. Prior to going to bed, did you have an occasion to come in contact with any local law enforcement in the

state of California?

A. Yes.

Q. Who were they?

A. An investigator from the Oceanside Police Department and from the San Diego Police Department.

Q. Let's start with the San Diego Police Department. Was there at some point in time, to your knowledge, an attempt to locate based on a motor vehicle in question?

A. Yes.

Q. And the attempt to locate was for what vehicle?

A. For Mr. Hummel's vehicle.

Q. Are you aware of any authorities, local law enforcement in the State of California, that were able to find that vehicle?

A. Yes.

Q. And which agency was that?

A. The San Diego Police Department.

Q. And what did they do with the vehicle, to your knowledge, at that time?

A. They took custody of it and towed it to their impound yard into a secure facility.

Q. They have a homicide yard?

A. They do.

Q. And the secure facility, could you describe it

8

for me?

A. It's a -- it's a very large warehouse.

Q. Is the vehicle locked inside the warehouse?

A. Yes.

Q. Were there certain security measures that you observed while you were there?

A. Yes.

Q. What were they?

A. You had to get through -- you had to call through a security gate, and then it was opened by someone somewhere whenever they allowed you access into it.

Q. Was there an alarm on the building as well?

A. I believe so, yes.

Q. This other agency you met with, who was that?

A. The Oceanside Police Department.

Q. Did you meet with one of their homicide detectives?

A. I did.

Q. Do you remember that detective's name?

A. Investigator Darrah.

Q. Does he have a first name?

A. George.

Q. And Investigator Darrah, did you have an occasion to speak to him in the early morning hours on

1 Monday before you went to bed?

2 A. Yes, we did.

3 Q. And did you meet him face to face after you had  
gotten some sleep Monday day -- Monday?

4 A. Yes.

5 Q. The Defendant in this case told you about a  
6 motel room in the city of Oceanside?

7 A. Yes.

8 Q. Is that in the county of San Diego?

9 A. Yes, it is.

10 Q. In the state of California?

11 A. It is.

12 Q. Did Investigator Darrah tell you that he had  
13 done anything to secure that facility?

14 A. Yes, he did.

15 Q. And what -- based on your understanding, what  
16 efforts were done to secure the room that Mr. Hummel  
17 told you about?

18 A. They did -- they stated they did an initial  
19 cursory search of the inside of the room to make sure  
20 nobody was in it and then placed an officer outside the  
21 door and waited for a -- for Mr. Darrah to arrive with  
22 any type of search warrants.

23 Q. Did the investigators from Texas meet up at  
24 Oceanside and visit with this homicide detective?

10

1 A. Yes.

2 Q. And was a search warrant produced as a result  
3 of the conversations?

4 A. Yes.

5 Q. Were you the affiant on the search warrant?

6 A. No.

7 Q. Were you precluded under the laws of California  
8 to be the affiant?

9 A. Yes.

10 Q. Who was the affiant?

11 A. George Darrah.

12 MR. BRISSETTE: May I approach, Your Honor?

13 THE COURT: You may.

14 Q. (BY MR. BRISSETTE) Detective, I'm going to  
15 show you what's been marked for identification purposes  
16 as PT-30. Take a second to look at PT-30 and see if you  
17 recognize the document.

18 A. Yes, I do.

19 Q. And is PT-30 the search warrant that was  
20 prepared in California with respect to this case?

21 A. Yes.

22 Q. How did Investigator Darrah come up with the  
23 facts that related to the Texas side of this case?

24 A. They were -- they were given to him by myself  
25 and Investigator Rzy.

1 Q. Were you, the three together, in the same room

2 discussing the facts and explaining what took place to

3 Investigator Darrah?

4 A. The three, meaning?

5 Q. Yourself, Darrah, Rzy.

6 A. Yes.

7 Q. Did you go with Investigator Darrah when this  
8 was brought to a -- a Judge out there?

9 A. Yes.

10 Q. And did you get a chance to meet the Judge?

11 A. I did.

12 Q. And was this gone over in the Judge's presence?

13 A. Yes.

14 Q. Did Officer Darrah -- Investigator Darrah sign  
15 this in the Judge's presence?

16 A. Yes.

17 Q. And did the Judge issue the search warrant?

18 A. Yes.

19 Q. And what is the warrant for?

20 A. It's for the search of the hotel room at the  
21 Coast Inn and for his vehicle.

22 Q. Were they both at the same location?

23 A. No.

24 Q. Is it your understanding that the law out there  
25 allows to have multiple locations in one warrant?

12

1 A. Yes.

2 Q. Did that catch you by surprise then?

3 A. Very.

4 Q. Were you able to -- were the two scenes able to  
5 be processed while you were out there?

6 A. Yes.

7 Q. And were items collected from those scenes?

8 A. Yes.

9 Q. At some point in time, you arrived back in the  
10 state of Texas?

11 A. Yes.

12 Q. Did you bring Mr. Hummel back with you?

13 A. No.

14 Q. Did you have an occasion to prepare a search  
15 warrant at some point for a Sony camera?

16 A. I did.

17 Q. Can you explain to the Court the nature of  
18 preparing a search warrant for the Sony camera?

19 A. The camera was in the possession of a female  
20 civilian, who arrived on scene before -- or at the same  
21 time or a little bit before Officer Worthy did. She  
22 began to take pictures on her personal camera and  
23 explained -- when she came in to talk to me, she  
24 explained to me that she had photos of the -- of the  
25 fire on the camera, so it was seized at that time by me.

1 Q. And did you execute a warrant SW-20317 to take  
2 the images off that camera?

3 A. Yes.

4 Q. And you've had a chance to look at PT-32 prior  
5 to coming up here, and that's the -- the affidavit for  
6 that warrant?

7 A. Yes.

8 Q. Did you have an occasion to -- based on what  
9 Mr. Hummel told you and some investigation you did on  
10 your own, to figure out where Mr. Hummel was employed?

11 A. Yes.

12 Q. And where was that?

13 A. It was at the -- it's now called the Harris  
14 Methodist Hospital in Cleburne.

15 Q. Was he being paid, based on your understanding,  
16 directly or indirectly by Harris?

17 A. Indirectly.

18 Q. Who did he work for then?

19 A. A company called Champion National Security.

20 Q. Through your investigation, did you come in  
21 contact with an individual by the name of William Ford,  
22 who is a medical doctor at that hospital?

23 A. Yes.

24 Q. Did you receive certain equipment from  
25 Dr. Ford?

14

1 A. I did.

2 Q. What did you receive from Dr. Ford?

3 A. I received his CPU from his office computer.

4 Q. I'm going to get techie on you for a second.  
5 CPU is the chip?

6 A. The actual tower is what we received from him.

7 Q. So you -- the whole personal computer?

8 A. Yes.

9 Q. Would that be a Compaq Presario?

10 A. It was.

11 Q. And prior to taking this from Dr. Ford, did you  
12 give him a consent to search form?

13 A. I did.

14 Q. And did Dr. Ford sign that in your presence?

15 A. He did.

16 MR. BRISSETTE: Approach the witness, Your  
17 Honor?

18 THE COURT: You may.

19 Q. (BY MR. BRISSETTE) I'm going to show you  
20 what's been marked for identification purposes as PT-34.  
21 Do you recognize PT-34?

22 A. Yes.

23 Q. And what is PT-34?

24 A. It's a consent to search form.

25 Q. For what?

1 A. For Dr. Ford's computer.

2 Q. And what date did you present that to Dr. Ford?

3 A. On January the 5th of 2010.

4 Q. And did Dr. Ford have a chance to look at it  
5 and sign it?

6 A. Yes.

7 Q. And what did you leave with him in addition to  
8 the consent to search form?

9 A. We left him with a -- a copy of -- of this  
10 with -- showing what we took from him.

11 Q. Did you take something back to Tarrant County  
12 from Johnson County that day in addition to this?

13 A. Yes.

14 Q. And did you record the serial number that you  
15 brought back?

16 A. I did.

17 Q. And that's on the consent to search?

18 A. It is.

19 MR. BRISSETTE: Your Honor, at this time we  
20 offer PT-34 for the purposes of this hearing, tender to  
21 Defense.

22 MR. CUMMINGS: We have no objection to the  
23 admission of State's Exhibit PT-34 for purposes of this  
24 hearing, Your Honor.

25 THE COURT: It's admitted.

16

1 (State's Pretrial Exhibit No. 34 admitted)

2 THE COURT: From a housekeeping standpoint,  
3 that -- that concludes all the evidence in the evidence  
4 list -- well, except for PT-16, I believe?

5 MR. BRISSETTE: Yes, Your Honor, and I'll  
6 have that this afternoon.

7 THE COURT: All right. Thank you.

8 May I have just a moment?

9 MR. BRISSETTE: Sure.

10 THE COURT: You may proceed.

11 Q. (BY MR. BRISSETTE) Detective, I want to direct  
12 your attention back to PT-15. I forgot to ask you  
13 yesterday about if the PD in the Medical Examiner's  
14 Office were able to identify the individuals that were  
15 found in the three rooms. In the AB corner, do you know  
16 who was found deceased in that room?

17 A. Yes.

18 Q. And who was that?

19 A. Clyde Bedford.

20 Q. In the CD corner, do you know who that  
21 individual was?

22 A. Yes.

23 Q. And who was that?

24 A. Jodi Hummel.

25 Q. And do you know how Ms. Hummel was identified?

1 A. As later identified by the Medical Examiner's

2 Office.

3 Q. Do you know what means they had to use?

A. I do not know.

5 Q. And then the AD corner, do you know who was  
6 found in that room?

7 A. Joy Hummel.

8 Q. Do you know if Joy was pregnant or not at the  
9 time?

10 A. She was.

11 Q. Was Joy Hummel, to your knowledge, related to  
12 Mr. Hummel in some way?

13 A. Yes.

14 Q. How were they related?

15 A. By marriage.

16 Q. The individual found in the CD corner, Jodi,  
17 how was she related to Mr. Hummel?

18 A. She was the daughter of Joy and Mr. Hummel.

19 Q. And in the AB corner, Mr. Bedford, how was he  
20 related to Mr. Hummel?

21 A. He is the father-in-law of Mr. Hummel.

22 Q. Would he be Joy's father, then?

23 A. Yes.

24 Q. And Jodi's grandfather?

25 A. Yes.

18

1 MR. BRISSETTE: Pass the witness.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. CUMMINGS:

5 Q. Detective Charbonnet, did you use anything to  
6 prepare for your testimony here today?

7 A. My case report.

8 Q. Is that the white book that you have at your  
9 left elbow?

10 A. It is.

11 MR. CUMMINGS: Your Honor, may I approach  
12 and take a brief period of time to look through the  
13 white notebook there?

14 THE COURT: That will be fine. We'll be  
15 off the record.

16 (Recess from 11:26 a.m. to 11:46 a.m.)

17 (Open court, Defendant present)

18 THE COURT: All right. Back on the record.  
19 You may proceed.

20 MR. CUMMINGS: Thank you, Your Honor.

21 Q. (BY MR. CUMMINGS) Detective Charbonnet, thank  
22 you for letting me look at your notebook there. And I  
23 believe you told me that's the entirety of the  
24 documentation that you used in preparation for your  
25 testimony; was that correct?

1 A. This file, and I have my photos there.

2 Q. Would you look at page 264 and just tell me  
3 what that is? I have a copy of that, but I haven't, for  
4 the life of me, figured out what it is. It appears to  
5 be a fax of three pages, I believe, from San Diego to  
6 here to the D.A.'s office. I'm not sure.

7 A. I can't tell you exactly where it came from.

8 Q. Just to be sure I picked the right page number,  
9 that's some sort of a fax cover sheet?

10 A. Is this the page you're referring to?

11 Q. Yes. Xerox?

12 A. It doesn't have an exact place that it came  
13 from.

14 Q. Okay. Would you -- further in your book, page  
15 519 in your book, there's a series of pages 516 to 519,  
16 I want to talk about. Let me know when you're there.

17 A. Okay.

18 Q. 516, and on, appear to be the crime scene log  
19 at the fire at 600 Little School Road; is that correct?

20 A. Yes.

21 Q. The pages that are contained within the sheet  
22 protector there on 519, what are those?

23 A. That appears to be part of the crime scene log,  
24 also.

25 Q. Okay. So 516 --

20

1 MR. CUMMINGS: May I approach the witness,  
2 Your Honor?

3 THE COURT: You may.

4 Q. (BY MR. CUMMINGS) 516, 17 and 18 are -- are  
5 departmental forms, correct?

6 A. Yes.

7 Q. These loose pieces of paper, are those  
8 continuations of the crime scene log after y'all ran out  
9 of their forms, or -- or what are they?

10 A. They appear to be.

11 Q. Okay. Are they numbered -- excuse me. Are the  
12 times consistent with following the last where it shows  
13 that you entered the crime scene at 14:40 and left at  
14 14:40 -- 56?

15 A. You said 14:56?

16 Q. That's the last entry on the printed form here  
17 on page 518.

18 A. And then reentered it, yeah.

19 Q. So it -- okay. Thank you.

20 You've given each of those loose-leaf pages  
21 to the D.A.'s office in addition to everything else  
22 within that white notebook, have you not?

23 A. I have.

24 Q. Okay. I've been provided pretty much all of  
25 your work, I suspect. There is something that I got



1 early on called Discovery 1. It's a DVD that contains  
2 what appears to be all the pages within that notebook  
3 that you just shared with me. Did you prepare that, or  
4 did you provide that to someone else to prepare that --  
5 that DVD?

6 A. I didn't provide it.

7 Q. Okay. You are a detective with the Kennedale  
8 Police Department, and I believe you testified that you  
9 had prior service with Mansfield?

10 A. Yes.

11 Q. Where did you go to the police academy?

12 A. Tarrant County College.

13 Q. And I'm sorry, I've forgotten. When did you  
14 graduate?

15 A. 2001.

16 Q. When you went to the course there at Tarrant  
17 County, were you already employed at Mansfield, or did  
18 you get your first position after you graduated?

19 A. After I graduated.

20 Q. When did you go to work for Mansfield?

21 A. I believe it was maybe May in their -- their  
22 marshal's office.

23 Q. May of 2001?

24 A. Yes.

25 Q. Did you remain within the marshal's office

22

1 while you were there at Mansfield?

2 A. No.

3 Q. What were your assignments there at Mansfield?

4 A. In what part?

5 Q. You worked at Mansfield from 2001 until when?

6 A. April of 2002.

7 Q. Okay. And then is that when you moved to  
8 Kennedale?

9 A. Yes.

10 Q. Did you work for the fire department there at  
11 Mansfield at all?

12 A. No.

13 Q. Had you had fire -- experience as a firefighter  
14 prior to going to work at Mansfield?

15 A. No.

16 Q. When you went to work for Kennedale, what was  
17 your assignment initially?

18 A. Patrol.

19 Q. When did you move to the C -- the criminal  
20 investigations unit?

21 A. Almost five years ago.

22 Q. 2005 or 2006?

23 A. I -- I can't be exact on the exact date. I  
24 believe it was around five years ago, so 2005.

25 Q. Sergeant Carlson and yourself are involved in

1 this case. How many other detectives or investigators  
2 are there with the Kennedale Police Department?

3 A. Detective Dagnell is the only other one that  
4 entered, I believe, one thing into evidence for us, and  
5 that was it.

6 Q. I'm just trying to get a feel for how big the  
7 investigative section is of that agency.

8 A. Three.

9 Q. Three? Okay. And -- and Carlson and yourself  
10 and Dagnell?

11 A. Yes.

12 Q. Thank you.

13 You are also certified as an arson  
14 investigator, correct?

15 A. Yes.

16 Q. Have you ever worked as a firefighter?

17 A. No.

18 Q. When did you -- or strike that.

19 How did you attain that certification,  
20 arson investigator?

21 A. Through the Kennedale Fire Department.

22 Q. What is involved in order to get that  
23 certification?

24 A. A 128-hour course.

25 Q. Where did you take that course?

24

1 A. Kennedale Fire Department.

2 Q. Who taught it?

3 A. It was put on by several different instructors,  
4 but Kennedale Fire Department was involved in it, also.

5 Q. Are there -- are you the only arson  
6 investigator in the city of Kennedale?

7 A. No.

8 Q. Who else?

9 A. Detective Dagnell, and there's others in the  
10 fire department now.

11 Q. Okay. Some agencies like Fort Worth, I  
12 believe, use cross-trained firefighters, send them back  
13 to the police academy. Apparently, Kennedale goes to  
14 the police department, finds somebody interested and  
15 trains them. Is that accurate or fair to say?

16 A. Yes.

17 Q. Okay. Prior to this fire, how many fires have  
18 you investigated as far as arson's concerned?

19 A. Two.

20 Q. When did you attain the certification of arson  
21 investigator?

22 A. 2006.

23 Q. Had you received any supplemental training in  
24 the area of arson investigation?

25 A. No.

1 Q. There are some times available to us from all  
2 sorts of sources involved in this case, such as the  
3 police Unit 51, the recording that we partially observed  
4 yesterday. Is it possible that the -- let me ask it  
5 just straightaway.

6 Appears to be two to three minutes'  
7 difference between the dispatch logs and the video on --  
8 that comes from the police unit. Is there any  
9 coordination that goes on as far -- is that possible  
10 that there is a variance of a -- of a few minutes from  
11 the different sources?

12 A. To be honest with you, I -- I don't know.

13 Q. Okay. You never have sat down and -- and made  
14 the comparison or look to see -- for instance,  
15 there's -- there's indications from your agency dispatch  
16 from the dispatcher, so-and-so arrived on the scene. I  
17 believe it's Worthy that was driving that unit, was it  
18 not?

19 A. Yes.

20 Q. And if there are records that indicate he  
21 arrived on the scene at a period -- particular time but  
22 the police unit varies from that time, which is going to  
23 be more accurate, in your opinion, or do you know?

24 A. Say this again?

25 Q. If there's a variance between the police video

26

1 time indicated on the screen that we watched yesterday  
2 and the one that the dispatcher enters in the report  
3 indicating when so-and-so got on the scene -- in this  
4 case, Worthy -- which -- which would you rely on, or  
5 which is -- I mean, I don't --

6 A. Are you asking me my -- personally which one do  
7 I use?

8 Q. Yes.

9 A. Dispatch.

10 Q. Okay. So if there is some sort of variance --  
11 there -- they try to keep theirs accurate.

12 THE REPORTER: I'm sorry?

13 Q. (BY MR. CUMMINGS) If there's some sort of  
14 variance, they -- dispatch tries to keep theirs  
15 accurate?

16 A. As far as I -- as far as I know.

17 Q. Okay. Was there a sword, a Samurai sword  
18 recovered from the crime scene, from the fire scene?

19 A. Not when I was inside the scene.

20 Q. Were you -- or did you follow up on some  
21 information in your investigation that there was, in  
22 fact, a sword and a knife that were located under one of  
23 the bodies?

24 A. I believe so.

25 Q. Okay. Would you -- if you need to refresh your

1 memory by looking at your report, please do so.

2 Did you, in fact, learn that there was a --  
3 a Samurai sword and some sort of knife, dagger or  
4 something located under one of the bodies by a  
5 firefighter and given to investigators, according to one  
6 of the firefighters?

7 A. May I look at my report real quick?

8 Q. Sure.

9 A. Mr. Cummings, I don't see anything in my report  
10 about it.

11 Q. Thank you for looking.

12 Were the -- were there times that you were  
13 conducting your investigation in one location and  
14 Sergeant Carlson was on a different tact at a different  
15 location?

16 A. Yes.

17 Q. Okay. Did you request that Chief McMurry  
18 obtain statements or reports from each of the  
19 firefighters who worked that scene?

20 A. Yes.

21 Q. Okay. Do you recall -- and receiving a report  
22 from Jacob Foresman that was written -- looks like an  
23 interoffice correspondence kind of thing written to  
24 Chief McMurry on the 22nd of December, 2009?

25 A. Yes.

28

1 Q. Is that contained within your -- in your  
2 notebook?

3 A. I believe so.

4 Q. Okay. Would you refer to that, please?

5 A. Okay.

6 Q. Is that a report that was written for you or  
7 for your benefit, or is that something that Sergeant  
8 Carlson was working?

9 A. We just requested a statement from each of the  
10 firefighters that was out there.

11 Q. Okay. So if my recollection is that one of  
12 you-all stumbled across this information and followed up  
13 on it trying to determine the source of this information  
14 and -- and the accuracy of it, it wouldn't have been  
15 you?

16 A. No.

17 Q. Okay. All right. Let's move to a different --  
18 you were on the scene at the fire pretty early. Pretty  
19 early.

20 A. Yes.

21 Q. Officer Worthy, however, was the first present  
22 from the Kennedale Police Department, correct?

23 A. Yes.

24 Q. Were you on the scene when John Hummel first  
25 appeared at 600 Little School Road?

1 A. Yes.

2 Q. Do you recall who it was that -- strike that.

3 Let me ask it differently.

Do you know who John Hummel first contacted  
there at the -- at the fire scene?

6 A. I was told it was Captain Hull.

7 Q. Did you interview John Hummel at the crime  
8 scene?

9 A. No.

10 Q. John Hummel then left the crime scene and went  
11 to the Kennedale Police Department, correct?

12 A. Yes.

13 Q. Did he go, or did he leave and go there at your  
14 direction?

15 A. No.

16 Q. Were you present when he was instructed or  
17 asked to go to the Kennedale Police Department?

18 A. No.

19 Q. Did you leave at the same time John Hummel did  
20 and go to the Kennedale Police Department?

21 A. No.

22 Q. Do you know approximately how long it was  
23 before you did?

24 A. 20 minutes, approximately.

25 Q. So is it fair to say that Mr. Hummel was there

30

1 at the police department for about 15, 20 minutes before  
2 you joined him in the room, the interview room?

3 A. Yes.

4 Q. Okay. Do you know who went with him -- strike  
5 that.

6 You sponsored a tape or observed a -- a VHS  
7 tape that was played yesterday, correct?

8 A. Yes.

9 Q. There was an individual that we first saw spell  
10 some words for Mr. Hummel in the room, stuff like that.  
11 Who was that?

12 A. Captain Hull.

13 Q. Okay. When you arrived at the police station,  
14 did you remain outside that interview room for any  
15 length of time before you entered it?

16 A. I don't recall.

17 Q. Is there a way that you can observe an  
18 interview that is taking place in that room from the  
19 outside?

20 A. Yes.

Q. How do you do that?

22 A. It's -- there's a closed-circuit -- or  
23 television on the other side of the wall.

24 Q. Do you recall whether you did that or not?

25 A. I don't recall.

1 Q. Okay. Were you present -- strike that.

2 Obviously, when -- when that tape first  
3 starts, you're not in the room, you're not there,  
4 correct?

5 A. Correct.

6 Q. It's just Captain Hull?

7 A. Correct.

8 Q. And it appears that Mr. Hummel is in the  
9 process of filling out what has been now introduced for  
10 purposes of this hearing as PT-18 when we first see an  
11 image on the screen, correct?

12 A. Yes.

13 Q. Okay. And it appears obvious, but I'm going to  
14 ask you: Were you present and did you observe Captain  
15 Hull read Mr. Hummel his Miranda warning or anything  
16 like that prior to having him fill out what is now in  
17 evidence as PT-18?

18 A. No.

19 Q. Let me direct your attention to PT-20, which is  
20 the consent to search form witnessed by Sergeant Carlson  
21 later on that morning. And I don't recall, but were you  
22 present when Sergeant Carlson obtained this consent to  
23 search from Mr. Hummel?

24 A. I believe I was in the room.

25 Q. Okay. There were times during that video that

32

1 you-all, for various reasons, either the bathroom or  
2 smoking, had to remove Mr. Hummel from the room,  
3 correct?

4 A. Remove him?

5 Q. There were times -- if -- if that term bothers  
6 you -- there were times that he exited the room and left  
7 to go to the bathroom or to smoke, correct?

8 A. Yes.

9 Q. And I believe you testified that you-all used  
10 the sally port for him to be able to smoke in -- in some  
11 comfort because of the cold --

12 A. Yes.

13 Q. -- right?

14 Was he accompanied wherever he was  
15 within -- since he was back in the secure area of the  
16 police agency, was he always accompanied while he was  
17 outside that room and off that video?

18 A. Yes.

19 Q. Who accompanied him?

20 A. It would either be myself, Agent Steele,  
21 Sergeant Carlson, Captain Hull.

22 Q. So it could have been any or -- any of you-all?

23 A. Yes.

24 THE COURT: I need to ask a quick question.  
25 Now, is Chief Hull Police Chief Hull or Fire Department

1 Chief Hull?

2 MR. CUMMINGS: Captain Hull, Judge, is the  
3 fire department, correct?

THE WITNESS: No.

MR. BRISSETTE: Police chief.

6 MR. CUMMINGS: I'm sorry. I said it wrong.  
7 I should have said police.

8 THE COURT: Thank you. All right.

9 Q. (BY MR. CUMMINGS) Kennedale is a small- to  
10 mid-size agency in the -- in the county?

11 A. Yes.

12 Q. Relative to the other agencies?

13 A. Yes.

14 Q. How many captains are there?

15 A. One.

16 Q. And does he oversee your unit in addition to  
17 other responsibilities?

18 A. As a whole?

19 Q. Yes.

20 A. Yes.

21 Q. Okay. During the times that he was out smoking  
22 in the sally port, were you-all continuing your  
23 discussion with him?

24 A. No.

25 Q. Did you-all also accompany him to the restroom?

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1 A. Yes.

2 Q. Did you interview him at all at any other  
3 location outside of that videotaped interview room?

4 A. No.

5 Q. When you -- so if you gave him any instructions  
6 regarding a consent to search, those instructions would  
7 have taken place in that room and in that room only,  
8 correct?

9 A. Yes.

10 Q. Tell me about Agent Steele. He's an ATF agent?

11 A. Yes.

12 Q. How did he come to be involved in this case?

13 A. He is on a multi-jurisdictional task force.

14 Q. Have you worked for -- with him before?

15 A. No.

16 Q. Do you know who called him to be at that fire  
17 scene?

18 A. No.

19 Q. Was there a decision, prior to entering that  
20 room, that he was going to participate in the interview  
21 of John Hummel?

22 A. Say again, please?

23 Q. It was a bad question.

24 Who decided that he would participate in  
25 the interview of John Hummel?

1 A. I did.

2 Q. Rio, the dog, Rio, the arson dog -- or whatever  
3 he is -- did that canine accompany Agent Steele, or was  
4 it some other individual who assisted you?

5 A. Some other individual who assisted me.

6 Q. Okay. Did someone there at the fire scene ask  
7 Mr. Hummel to accompany them to the police station?

8 A. Did somebody at -- I believe Captain Hull -- he  
9 went with Captain Hull down to --

10 Q. If he wasn't in your presence, fine, but I  
11 mean --

12 A. He was -- he was not in my presence.

13 Q. Okay. So you are not -- you are not aware of  
14 the language that he used in order to get him to the  
15 police station?

16 A. No.

17 Q. Okay. Whenever you -- you first entered that  
18 room with Agent Steele, had you already made your mind  
19 up at that point that this individual was a suspect?

20 A. No.

21 Q. Okay. At what -- at some point in the process,  
22 though, you did make that decision, did you not?

23 A. No.

24 Q. The interview of Mr. Hummel that we observed on  
25 tape became accusatory pretty quickly, in my opinion.

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1 Is that an unfair characterization, in your opinion?

2 A. If that's your opinion, that's okay.

3 Q. You were pressing him -- as a matter of fact,  
4 early on or throughout that tape, there were several  
5 places where either you or Agent Steele pretty much made  
6 it clear that you didn't believe him and that he needed  
7 to -- to -- you didn't use the word fess up, but  
8 essentially tell you the truth because you didn't  
9 believe he'd been telling you the truth?

10 A. Yes.

11 Q. That -- that occurred fairly early on, did it  
12 not?

13 A. Early on how? I -- I don't know if I  
14 understand your question.

15 Q. Okay. Do you recall telling him that he could  
16 leave at any time?

17 A. I don't recall.

18 Q. Do you know whether or not he was told he could  
19 leave by Captain Hull prior to your entry into that room  
20 and interviewing the -- the Defendant?

21 A. I can't answer for Captain Hull.

22 Q. Is it fair to say that he became a suspect  
23 during that interview?

24 A. He was becoming questionable.

25 Q. One of the tactics or one of the questions that

1 you asked him indicated to him -- or indicated to  
2 Mr. Hummel that -- that you had a -- a witness that  
3 there was an altercation either between Clyde Bedford or  
4 Joy Hummel and John. Who was that witness?

5 A. There was not one.

6 Q. So that was a fabrication?

7 A. Yeah.

8 Q. Have you attended any other police training in  
9 addition to your TCJC or TCC, whatever it's called,  
10 training?

11 A. Uh-huh, I have.

12 Q. Have you -- as a result of becoming a  
13 detective, did they send you to some in-service training  
14 or additional training?

15 A. They did.

16 Q. What type?

17 A. I attended a interview interrogation school in  
18 Meridian, Mississippi, and a statement analysis school  
19 in San Angelo, Texas.

20 Q. How long was the interview interrogation  
21 school?

22 A. 40 hours.

23 Q. Was any one particular technique taught there?

24 A. Dr. Steve Rhodes.

25 Q. I'm sorry?

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1 A. Dr. Steve Rhodes.

2 Q. Could you spell the last name?

3 A. R-h-o-d-e-s.

4 Q. Was the -- did he teach the Reid Technique?

5 A. No.

6 Q. Have you ever been trained in that?

7 A. No.

8 Q. And what was the other school -- interview  
9 interrogation, what was the other --

10 A. Statement analysis.

11 Q. What is -- what is that about?

12 A. Review and analyze statements to verify  
13 inconsistencies, things of that nature.

14 Q. When did you attend the interview interrogation  
15 school, approximately?

16 A. Approximately 2007.

17 Q. And the statement analysis?

18 A. Same year, I believe.

19 Q. The interview that we observed of -- from 12/18  
20 of '09, John Hummel, that interview pretty quickly moved  
21 to an effort get an admission of guilt from John Hummel;  
22 is that -- is that fair?

23 A. Just like I answered before just a few minutes  
24 ago, if that's what you believed, that it moved real  
25 quickly, that's fine. I thought that it moved as

1 quickly as -- as the interview did.

2 Q. Okay. And let me -- let me eliminate a time  
3 factor involved.

4 A. Okay.

5 Q. But it did evolve to an effort to getting an  
6 admission of guilt from the individual, John Hummel?

7 A. It evolved into possibly trying to -- there was  
8 more to the story than what he was saying.

9 Q. Okay. Was there any discussion with John  
10 Hummel off camera regarding his -- obtaining his clothes  
11 from him?

12 A. Not that I was ever privy to.

13 Q. During the interview that we observed,  
14 initially involved you and Agent Steele, and then  
15 Sergeant Carlson, by himself, entered the room and  
16 appeared to be in there for several minutes talking with  
17 John Hummel. During the time that Carlson was in the  
18 room, were you participating in the interview; in other  
19 words, watching the interview, still active?

20 A. I don't recall exactly where I was, standing  
21 or --

22 Q. There were knocks on the door and such as that.  
23 This investigation at the scene was still going on, was  
24 it not?

25 A. It was.

40

1 Q. You-all were getting information from people  
2 who are actually still actively involved at the fire  
3 scene, correct?

4 A. Not that I knew of.

5 Q. Okay. There were knocks on the door and that  
6 sort of thing and pieces of paper that came in. Do you  
7 have any idea what those were? Primarily to Agent  
8 Steele while you were talking.

9 A. I don't know.

10 Q. Okay.

11 A. You'd have to ask Agent Steele that.

12 Q. We have not been provided or seen on camera any  
13 consent to search form for the clothing that John Hummel  
14 had taken from him there on the 18th. Is there one?

15 A. No.

16 Q. About an hour and a half into the tape you --  
17 and that may not be -- it's based upon the counter on  
18 the software. But approximately an hour and a half into  
19 the tape, you administered Miranda warnings to  
20 Mr. Hummel, correct?

21 A. Yes.

22 Q. Why?

23 A. I wanted him to make sure that he knew that he  
24 was not under arrest and that he was free to leave at  
25 any time.



1 Q. The -- I believe it was during your testimony  
2 that you indicated the temperature at -- on that  
3 particular day. Excuse me. Do you recall that it was  
particularly cold?

4 A. Yes.

5 Q. Excuse me. When John Hummel left, you had  
6 taken from him his shoes, had you not? He left in  
7 stocking feet, did he not?

8 A. Yes.

9 Q. He was -- we -- we observed him shivering on  
10 the recording. He walked out of that building pretty  
11 much the way we saw him walk out of that room; is that  
12 right?

13 A. Yes.

14 Q. Short-sleeve shirt and stock -- or sock --  
15 shoeless feet?

16 A. Yes.

17 Q. Do you know how the VIN was obtained from the  
18 van, the Windstar van?

19 A. No.

20 Q. It was on the consent to search form, so I  
21 assume it was obtained prior to having Mr. Hummel sign a  
22 consent to search form; is that fair to say?

23 A. Sure.

24 Q. Okay. Did you-all search the vehicle?

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1 A. No.

2 Q. You went to the trouble to get his consent.  
3 How come y'all didn't follow up?

4 A. I don't know.

5 Q. Okay. Were you allowed into the fire scene  
6 prior to the discovery of the deceased?

7 A. No.

8 Q. What triggered your admission to the crime  
9 scene -- to the fire scene, crime scene, whichever?

10 A. I got a call from dispatch stating that the  
11 fire chief wanted me to come to 600 Little School Road.

12 Q. That was the call you received initially to go  
13 to the location, correct?

14 A. Yes.

15 Q. I'm asking about when you actually went into  
16 the house. What -- what -- who gave you approval, it's  
17 okay for you to go in the house?

18 A. The fire chief.

19 Q. Okay. And you were still on scene at that --  
20 when that took place?

21 A. Yeah.

22 Q. Okay. How far away from the police station is  
23 600 Little School?

24 A. Half a mile, maybe three quarters.

25 Q. Okay. So there was -- during your

1 investigation, you went back and forth on some  
2 occasions; is that correct?

3 A. At times, yes.

4 Q. Okay. When was the crime scene log started?

5 A. Can I refer to my --

6 Q. Sure.

7 A. Okay.

8 THE COURT: Mr. Cummings, why don't we find  
9 a spot where we can take a break for lunch?

10 MR. CUMMINGS: Anytime, Judge.

11 THE COURT: Okay. Well, then, let's take  
12 one now while he's reviewing his notes. Let's go ahead  
13 and take a recess for --

14 THE WITNESS: Don't answer the question  
15 right now?

16 THE COURT: Detective Charbonnet, you may  
17 answer the question.

18 THE WITNESS: I'm sorry. It appears that  
19 it was started on 2:35 a.m.

20 Q. (BY MR. CUMMINGS) Thank you.

21 THE COURT: I'm sorry. You said 5:30 a.m.?

22 THE WITNESS: 2:35 a.m.

23 THE COURT: 2:35 a.m. Thank you.

24 I only have one more question, if -- if I  
25 may?

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1 MR. CUMMINGS: Sure, Judge.

2 THE COURT: If you would ask him,  
3 Detective, when did he receive authorization from the  
4 fire chief -- chief to enter the scene?

5 Q. (BY MR. CUMMINGS) 2:35 a.m. is when the crime  
6 scene log started. When did you obtain permission to  
7 enter?

8 A. I don't have the exact time for that.

9 Q. As far as -- do you recall in -- in not  
10 necessarily exact time, but in sequence of events, how  
11 soon it was that you -- strike that.

12 Who decided that a crime scene log was  
13 necessary?

14 A. It might have been me.

15 Q. Okay. Some agency -- different agencies --  
16 agencies differ as far as who's in charge -- charge at  
17 one of these things. Who was in charge?

18 A. At the time I was.

19 Q. So once it became -- at what point did you  
20 become in charge?

21 A. The commander of the whole entire scene was the  
22 fire chief. Okay? And as far as the crime scene log  
23 part of it, that was me.

24 Q. So were you the one who ultimately said,  
25 officer so-and-so, would you please -- or do -- do the

1 crime scene log?

2 A. I believe the fire chief was standing there  
3 with me, and we said, yeah, we need crime scene, I  
4 believe was what it was.

5 Q. Thank you.

6 MR. CUMMINGS: Is that all you need, Judge?

7 THE COURT: We still don't have an  
8 approximate time in relation to his answer.

9 MR. CUMMINGS: Well, I -- I thought we'd  
10 start back up right there.

11 THE COURT: Okay. Sounds good.

12 We'll be in recess until -- it's 12:30.

13 How about 1:45? We'll resume at that point. Thank you.

14 (Recess from 12:32 p.m. to 1:54 p.m.)

15 (Open court, Defendant present)

16 THE COURT: All right. Are both sides  
17 ready to proceed?

18 MR. BRISSETTE: The State's ready.

19 MR. CUMMINGS: Yes, Your Honor.

20 THE COURT: All right. I believe that you  
21 are still on cross.

22 MR. CUMMINGS: Thank you, Your Honor.

23 Q. (BY MR. CUMMINGS) Detective Charbonnet, we  
24 were talking about the -- the crime scene log, and I  
25 think over lunch we've determined that those handwritten

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1 pages on page 519 in your notebook are actually  
2 contained within the discovery material that's been  
3 provided to Defense.

4 This was a process where initially the fire  
5 department responded to a structure fire, and at some  
6 point in time, the chief out there decided that this was  
7 more than just a structure fire, correct?

8 A. Can you rephrase that?

9 Q. The chief decided to call you out.

10 A. Yes.

11 Q. Why?

12 A. At first he -- I got a call that -- that the  
13 chief wanted me out for a fire. That was it.

14 Q. Do they call you when it's a -- just a  
15 structure fire?

16 A. We have a new -- we had a new fire chief at the  
17 time, and that was his thing.

18 Q. So it wasn't a decision based upon the  
19 discovery of a body --

20 A. No.

21 Q. -- or anything like that?

22 A. No.

23 Q. I see. And that's why you were called before  
24 any -- strike that.

25 Were you called before anybody, as far as

1 your understanding is concerned, entered into the  
2 structure itself?

3 A. As far as firemen?

4 Q. Yes.

5 A. Just regular fire suppression?

6 Q. Yes, sir.

7 A. I -- I don't know if anybody was in there  
8 before I was called or not as far as putting water on  
9 the -- on the fire.

10 Q. When you got there, the fire was still going --

11 A. Yes.

12 Q. -- correct? Okay. And had to be fought for  
13 quite a few minutes before it was extinguished, correct?

14 A. Yes.

15 Q. When you initially entered, you did so for the  
16 purposes of taking photographs, correct?

17 A. And preserving any possible evidence or  
18 anything that could help identify what happened in the  
19 fire.

20 Q. And what do you mean by that?

21 A. Just to preserve any -- any way to find out how  
22 the fire got started.

23 Q. Okay. So on your initial entry, you were doing  
24 more than just capturing the images or the scene as it  
25 existed when you first walked in; you were also looking

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1 to collect evidence?

2 A. We were looking for anything that could  
3 possibly lead us to a conclusion or lead us in any  
4 direction to help find out why the fire took place.

5 Q. Okay. Would you tell -- there are some  
6 terminology here I'm not familiar with. I don't know if  
7 the Judge is or not, but assuming he's not, what's a  
8 quint?

9 A. A quint is -- and I'm not in the fire  
10 suppression.

11 THE REPORTER: I'm sorry, sir?

12 THE WITNESS: I'm not in the fire  
13 suppression line of this, but a quint is a -- is a fire  
14 truck that holds various positions. It can do various  
15 things. It's also a ladder truck, a water truck, a  
16 tanker -- not a water truck -- a tanker, has a ladder on  
17 it, it's capable of doing multiple things that other  
18 vehicles would be able to do.

19 Q. (BY MR. CUMMINGS) In looking through the  
20 dispatch logs, there appear to be, I think, three  
21 designations for fire units Q-59, M-59, if I remember  
22 correctly, and C-59. Do you know what those stand for?

23 A. The Q-59 is Quint 59.

24 Q. Right.

25 A. The M-59 is Medic 59. The C-59, I'm not sure

1 exactly. I've never heard that one.

2 Q. What is the chief -- how is Chief McMurry  
3 referred to?

A. It may be Chief 59, also.

Q. Okay. In addition to your agency and your  
6 city's agency, there were Mansfield and other city  
7 agencies there, fire agencies there as well, aren't --  
8 weren't there?

9 A. Yes.

10 Q. Forest Hill?

11 A. Yes.

12 Q. Okay. Let's go back to the -- to the interview  
13 process. You -- I'm going to ask you to refer to your  
14 supplement that you prepared. I don't see any page  
15 number that you have, but I think I -- I've been  
16 provided a 17- or 18-page supplement I think you  
17 prepared to offense report 0900017546. Do you have  
18 that?

19 A. Uh-huh.

20 Q. Okay. And the offense report number,  
21 0900017546, that number is consistent throughout all of  
22 the agency's reports pertaining to this incident, is it  
23 not?

24 A. Yes.

25 Q. And the -- I noticed that the -- there is a

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1 dispatch report of some sort or an incident report as  
2 well as a missing persons report. They all reflect that  
3 same offense report number, correct?

4 A. Yes.

5 Q. All right. You give quite a few details about  
6 the interview that took place on the 18th of December  
7 within your supplement. On the fifth page of the  
8 document that I have, is there is a paragraph that  
9 begins, during the interview?

10 THE COURT: I'm sorry. What document are  
11 you referring to?

12 MR. CUMMINGS: The supplement that  
13 Detective Charbonnet prepared to the original offense  
14 report.

15 THE COURT: All right. Thank you.

16 Q. (BY MR. CUMMINGS) In there you talk about  
17 identifying physical evidence on Mr. Hummel's clothing,  
18 and you indicate in your report that you took that  
19 clothing --

20 A. Yes.

Q. -- from him because of the -- because of the  
22 fact that you recognized that there was, in fact,  
23 possibly some biological or something of an evidentiary  
24 nature that you wanted to collect, correct?

25 A. I could tell that there was something on -- on

1 the clothing.

2 Q. And essentially your statement is that you told  
3 him that it was part of the investigative process for  
4 them to take his clothes, and you were going to take his  
5 clothes, correct?

6 A. Yes.

7 Q. Did you-all admonish him that he didn't have to  
8 give you his clothes?

9 A. No.

10 Q. Did you ever give him any sort of information  
11 consistent or similar to what you do whenever you get a  
12 consent to search from somebody where you let them know  
13 that they can decline or anything like that? Did you  
14 ever let him know he could decline?

15 A. No.

16 Q. Okay. Throughout that interview, it appears  
17 from watching it that initially Agent Steele was  
18 handling the questioning, but at some point you decided  
19 to take over the lead as far as any questioning was  
20 concerned, and from that point on, it was primarily you  
21 directing the questioning; is that correct?

22 A. I believe that we both went -- questioned back  
23 and forth.

24 Q. And is it -- once you recognized -- I believe,  
25 in your words, or maybe Agent Steele's words -- once you

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1 decided that his story just didn't make sense, you-all  
2 spent quite a bit of time trying to persuade this man to  
3 tell you the truth; is that right?

4 A. Yes.

5 Q. And were those persuasive efforts that you were  
6 exerting? I mean, were you -- you were doing everything  
7 you could, everything you had been trained to do, to try  
8 to get the information you needed to gather, right?

9 A. Yes.

10 Q. The arson arrest warrant is what I'd like to  
11 talk to you about now, the -- the affidavit that you  
12 prepared. I believe you testified on direct examination  
13 that there were five of you-all who gathered. I may  
14 have misunderstood, but it seemed there were five of  
15 you-all that discussed areas of incendiary -- did  
16 five -- did you and four others get together and try to  
17 decide how you needed to proceed as far as this fire  
18 investigation was concerned?

19 A. Yes.

20 Q. Okay. Who were those four others?

21 A. Agent Steele, Investigator Ingram, Rehfeld and  
22 Sergeant Carlson.

23 Q. Rehfeld. How is -- is that a firefighter?

24 A. He's with the Tarrant County Fire Marshal's  
25 office.



1 Q. Okay. How does that relationship work? Your  
2 fire department gets there, and they decide we need our  
3 arson investigator for one reason or another, and you're  
4 called and you're in charge at that point. Ultimately,  
5 you have the Tarrant County Fire Marshal that shows up,  
6 you have ATF personnel who show up, Tarrant County  
7 Sheriff's Department was out there. Why was -- strike  
8 that.

9 What is the relationship -- or how does the  
10 Tarrant County fire marshal get involved?

11 A. It's called by the fire chief, fire marshal's  
12 office.

13 Q. And is -- what is their purpose?

14 A. To come out and assist in investigating the  
15 fire.

16 Q. Is the fire marshal involved in a fire that is  
17 accidental or -- I mean, what triggers a fire chief  
18 decision, I need to involve a fire marshal?

19 A. Honestly, I don't -- I don't know the answer to  
20 that question.

21 Q. Okay.

22 A. It would be better left for the fire chief.

23 Q. Are they always on the scene whenever you've  
24 been called on a suspicious fire suspected of being  
25 arson?

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1 A. Well, since I've only worked two, I don't think  
2 they've been on either one of those.

3 Q. But they were on this one, fire --

4 A. Yes, yes.

5 Q. ATF. You had two ATF agents out there,  
6 correct?

7 A. Yes.

8 Q. Are you familiar with them enough to talk about  
9 them?

10 A. Not really.

11 Q. Your report indicates -- identifies Agent  
12 Steele as an ATF agent. Is he an ATF agent, to your  
13 knowledge, or is he a deputized local officer who worked  
14 with ATF?

15 A. He is -- he is an ATF agent. The other one is  
16 a deputized task-force agent.

17 Q. There was a Bedford firefighter?

18 A. Yes.

19 Q. Langford?

20 A. Yes.

21 Q. Who was actually the affiant in one of our  
22 exhibits, the search warrant of the firearm?

23 A. Yes.

24 Q. Okay. Langford's day-to-day job is a Bedford  
25 fireman?

1 A. As far as I know, yes.

2 Q. Have you worked with him on any other fires?

3 A. No.

4 Q. Okay. The five of you confer. When was that?

5 A. At the -- to my recollection, it's the end of  
6 Friday and into Saturday.

7 Q. The 18th was Thursday, is that accurate, or  
8 am I --

9 A. I believe it was -- the 18th was a Friday.

10 Q. So on the -- on in -- you worked through the  
11 night in -- on the 18th, and you-all met later in the  
12 p.m. hours of the 18th on into the 19th; is that  
13 accurate?

14 A. Yes.

15 Q. Okay. I'm just trying to -- I'm thinking of  
16 everything with dates is not -- so at some point after  
17 that meeting, you go home, get some rest?

18 A. Yes.

19 Q. And then you're called back to do an arrest  
20 warrant for John Hummel, who is now in custody in  
21 California, correct?

22 A. Yes.

23 Q. Did you have any assistance in preparing that  
24 arrest warrant affidavit from any of those other four  
25 arson investigators?

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1 A. Yes.

2 Q. Did they -- did they come down and join you to  
3 prepare that?

4 A. They were -- we talked to them on the  
5 telephone.

6 Q. I see.

7 Whenever you -- you wrote that arrest  
8 warrant affidavit, you talked about Rio, the dog, and  
9 his -- the evidence that he provided you-all, correct?

10 A. Yes.

11 Q. And you actually put in the affidavit that the  
12 dog is trained to alert on fire accelerants, correct?

13 A. Yes.

14 Q. Had you worked with that canine before?

15 A. No.

16 Q. Had you ever worked with a canine that alerts  
17 on accelerants before?

18 A. No.

19 Q. Were you present when Officer Langford  
20 processed -- processed the scene with Rio?

21 Let me ask it different. Did you accompany  
22 Mr. Langford when he went through the house with Rio?

23 A. No.

24 Q. However, you included in your affidavit that  
25 Rio had alerted to accelerants on -- in -- at six or

1 seven different points in the house, correct?

2 A. Yes.

3 Q. And at the time you did this warrant, that's  
all you knew?

4 A. Yes.

5 Q. Who collected samples from those -- just for  
6 clarification, is it six points or seven points? I -- I  
7 remember two in each bedroom, or where there was  
8 sleeping area, and one centrally located in the house;  
9 is that correct? And that would make seven?

10 A. I believe that is correct.

11 Q. Okay. Who collected those seven samples?

12 A. They were collected by the Tarrant County Fire  
13 Marshal's Office and ATF.

14 Q. Okay. So was this done with your involvement?

15 A. Yes. I photographed.

16 Q. So you were present as they were doing it, you  
17 were part of the team, your function was to record it by  
18 photography?

19 A. Yes.

20 Q. You subsequently have learned there were no  
21 accelerants, correct?

22 A. Yes.

23 Q. Were you able, just out of curiosity, to know  
24 or -- strike that.

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1 You were there when they collected the  
2 stuff, but you weren't there necessarily when Rio went  
3 through, correct?

4 A. Yes.

5 Q. Okay. Forget the next question.

6 Do you recall -- I think it's in your  
7 supplement, maybe. Correct me if I'm wrong, but I  
8 believe in your report, you indicated that you took your  
9 initial photographs to document the -- to document the  
10 scene as soon as possible; in other words, when you  
11 first went in. Is that accurate or --

12 A. If I may refer to the report?

13 Q. Please.

14 A. Okay. I don't see where I said that I put  
15 there -- whenever -- documenting anything.

16 Q. Okay. And we have -- I've located where we  
17 came across that.

18 Sergeant Carlson is your supervisor?

19 A. Yes.

20 Q. He was in doing a photo log as you were taking  
21 your photos; is that correct?

22 A. Yes.

23 Q. There was a Lieutenant Cleveland, who was  
24 also -- Fire Lieutenant Cleveland, who was also in the  
25 fire scene. I don't know if he was necessarily

1 accompanying you while you were doing that, but he was  
2 present as well; is that accurate?

3 A. I believe so.

4 Q. Do you recall locating Joy Hummel's purse with  
5 Lieutenant Cleveland and Sergeant Carlson? Were you  
6 there when they did that in the laundry room?

7 A. I don't remember being right there with them  
8 whenever they --

9 Q. Okay. And I'm just trying to establish whether  
10 or not they gathered or collected some items out of her  
11 purse on that initial passthrough or whether it was  
12 later. Do you know?

13 A. I -- I -- I don't recall.

14 Q. When you prepared your arrest warrant affidavit  
15 for the offense of arson, you described the crime scene  
16 for the Judge and the evidence that you-all gathered  
17 together that you believed indicated that it was, in  
18 fact, arson, and then you talked about the reasons that  
19 you believe implicated or -- that you should have a  
20 warrant for John Hummel. Is that a fair assessment of  
21 an affidavit that you prepared?

22 A. Yes, sir.

23 Q. Okay.

24 THE COURT: Let me --

25 Q. (BY MR. CUMMINGS) When you described John

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1 Hummel --

2 THE COURT: Let me interject real quick.

3 Let me take a look at the affidavit so I can read that  
4 right now, and I can follow along a little bit better.

5 MR. CUMMINGS: Sure.

6 This is PT-24, Your Honor.

7 THE COURT: Thank you. Let me review this.  
8 All right. You may proceed.

9 MR. CUMMINGS: Thank you, Your Honor.

10 And for the benefit of the Court, I'm  
11 asking about a paragraph on page 2 of his affidavit.

12 The husband of Joy Hummel arrived back at their  
13 residence on the second page of the affidavit.

14 Q. (BY MR. CUMMINGS) Detective, you prepared this  
15 warrant to present a Judge -- excuse me -- prepared this  
16 affidavit to present a Judge in the effort to get a  
17 warrant for Mr. Hummel's arrest, correct?

18 A. Yes.

19 Q. And in that affidavit, you indicated that John  
20 Hummel had displayed no emotion whatsoever during the  
21 time that you-all interviewed him at the police station;  
22 is that fair to say? Is that accurate?

23 A. Yes, sir.

24 Q. You sat here with us the last two days watching  
25 videos, in particular yesterday's video, and is it still

1 your opinion that Mr. Hummel did not display any emotion  
2 at all?

3 A. Based on the information told me by Sergeant  
4 Carlson, yes.

5 Q. You were not necessarily in the room when  
6 Sergeant Carlson was present; however, you told us that  
7 you were observing outside on a video monitor; is that  
8 correct?

9 A. No, that's not what I said.

10 Q. Okay. Were you observing just portions of  
11 Sergeant Carlson's interview of Mr. Hummel from the  
12 outside?

13 A. I don't recall if I walked by or what exactly I  
14 was doing at that time.

15 Q. But you weren't actively tag-teaming him,  
16 working with Sergeant Carlson in an effort to get more  
17 information out of this gentleman?

18 A. No.

19 Q. There were times that he broke down on the tape  
20 that we watched yesterday and actually cried. You left  
21 that out. Did you not know about it?

22 A. I knew about it.

23 Q. That's not emotion?

24 A. I said based on the information that Sergeant  
25 Carlson gave to me, there was not any emotion.

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1 Q. You knew about it. You're -- you're drawing a  
2 distinction here, so explain it to me.

3 A. Sergeant Carlson explained that whenever he  
4 would bend over and make the loud whining noises, that  
5 when he looked up, there was no tears in his eyes, there  
6 was no running of the nose, quivering of the speech,  
7 nothing to that nature. The Kleenexes were not wet,  
8 according to what he told me. He believed they were not  
9 wet. So the emotion appeared to him to -- to possibly  
10 be not real.

11 Q. So even though what we saw in the video  
12 appeared to be emotion, it's your information that it  
13 was artificial or contrived?

14 A. Rephrase that.

15 Q. Well, you're describing the same thing we  
16 observed, and you're indicating that Sergeant Carlson  
17 didn't believe that it was real, and therefore -- or you  
18 put in your affidavit there was none --

19 A. Yes.

20 Q. -- because you didn't believe the emotion that  
21 it appears on the video?

22 A. Yes.

23 Q. Okay. Let's talk about missing persons report.  
24 Do you have an operations manual there at the Kennedale  
25 Police Department?

1 A. For what?

2 Q. Police agencies -- many police agencies you  
3 can't go to work without a rule telling you when to show  
4 up and how you're dressed and where you can go and when  
5 you can take a break and stuff like that. Do you have a  
6 procedures manual or a general orders handbook or some  
7 document like that that dictates how you conduct  
8 yourself as a Kennedale police officer?

9 A. Yes.

10 Q. Is there a chapter or book or section of it  
11 that governs your conduct as an investigator or as an  
12 investigating officer even in uniform?

13 A. At the time?

14 Q. Yes.

15 A. Not that I recall.

16 Q. Was there a procedure in place at that time as  
17 to what you do when someone files a missing person  
18 report to Kennedale?

19 A. Not that I've ever seen in our policy and  
20 procedures manual. I don't know what goes on in the  
21 other divisions.

22 Q. Okay. You worked for awhile in uniform before  
23 you were promoted to detective?

24 A. Yes.

25 Q. Okay. And I would assume that the person who

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1 is charged with taking missing person reports is  
2 probably one of those uniformed officers, correct?

3 A. Yes.

4 Q. Uniformed officers are usually governed a lot  
5 more stringently or tightly than investigative  
6 personnel, correct?

7 A. I believe we follow the same general orders.

8 Q. Generally, yes, but, I mean, aren't there  
9 specific guidelines on how -- how they take a report?

10 A. At the time there -- there was -- no, to answer  
11 your question.

12 Q. Okay. Was -- is there -- strike that.

13 Was there on the 20th of December, 2009, a  
14 standard policy at the Kennedale Police Department on  
15 when you take a missing persons report?

16 A. Not that I was aware of.

17 Q. Okay. Is there any sort of waiting period that  
18 you want the citizen to have expire before you take such  
19 a report, generally?

20 A. No.

21 Q. Whenever Chris Paris showed up at the Kennedale  
22 Police Department to report John Hummel missing, Brian  
23 Goode took the report, did he not?

24 A. Yes.

25 Q. Is Brian Goode a uniformed sergeant?

1 A. He is.  
2 Q. And whenever he met with this gentleman, were  
3 you present?

A. No.

Q. Before he took a report -- strike that.

6 At some point this sergeant -- this patrol  
7 sergeant came to talk to you and Sergeant Carlson,  
8 correct?

9 A. Yes.

10 Q. He did that before he took the report, correct?

11 A. Yes.

12 Q. And you-all conferred with Mr. Brissette before  
13 he took the report, correct?

14 A. Yes.

15 Q. And after you-all met -- or excuse me. Strike  
16 that.

17 After Brian Goode -- Sergeant Brian Goode  
18 met with you-all, it was only then he felt he had the  
19 authorization to go ahead and do a missing persons  
20 report, correct?

21 A. The authorization?

22 Q. Okay. Bad word. Pick whatever you want. He  
23 didn't do the report until he met with you-all and got  
24 it approved?

25 A. Yes.

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1 Q. Somebody suggested that when he do that report,  
2 that he make sure that the NCIC printout or broadcast,  
3 or whatever word is used, indicated that Mr. Hummel was  
4 armed and dangerous, correct?

5 A. Somebody did.

6 Q. Did -- did it occur while you were present? I  
7 mean --

8 A. I was not there whenever that was being done.

9 Q. Okay. You know it was done, but it wasn't --  
10 you don't know who?

11 A. Exactly.

12 Q. The arrest warrant affidavit identifies that  
13 missing persons reportee or reporter as whom?

14 A. Christopher Harris.

15 Q. Okay. Now, this man's actual name is  
16 Christopher Paris; is that correct?

17 A. Yes.

18 Q. P-a-r-i-s?

19 A. It is.

20 Q. Had you -- you're aware of a criminal history.  
21 You know quite a bit about this guy, don't you?

22 A. I believe Sergeant Carlson looked at that.

23 Q. Okay. So that is a mistake in the -- in the  
24 affidavit?

25 A. Yes.

1 Q. Let's go to California.

2 You had the assistance of Detective George  
3 Darrah, D-a-r-r-a-h; is that correct?

4 A. Yes.

5 Q. And he was an Oceanside detective?

6 A. Yes.

7 Q. And Detective Darrah is the affiant on the  
8 search warrant that authorized you-all to search --  
9 ultimately authorized you-all to search the motel room  
10 there at the Coast Inn as well as a -- the Windstar van,  
11 correct?

12 A. Yes, sir.

13 Q. The van was actually located as a result of you  
14 gentlemen interviewing Mr. Hummel at the San Diego  
15 County Jail, correct?

16 A. Yes.

17 Q. He gave you -- actually drew a map as to where  
18 the Windstar van was?

19 A. Yes.

20 Q. And it was legally parked in a pay lot just  
21 north of the border?

22 A. Yes, sir.

23 Q. The -- somebody enlisted the help of the  
24 California authorities to go get that van and pull it to  
25 a secure location. Was it -- do you know whether it was

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1 you or Sergeant Carlson and the agent present?

2 A. It was not me. I don't know exactly the person  
3 that made the phone call.

4 Q. The van was actually seized from that parking  
5 lot and taken, I believe you testified on direct, to a  
6 secure warehouse facility prior to Detective Darrah's  
7 obtaining the search -- a search warrant, correct?

8 A. Yes.

9 Q. Were you aware -- strike that.

10 Did you help in the preparation of that  
11 affidavit --

12 A. Can you --

13 Q. -- of the search warrant?

14 A. Can you rephrase it?

15 Q. Sure. Did you assist Detective Darrah prepare  
16 the search warrant affidavit?

17 A. Yes.

18 Q. Did you have the benefit of the videotape taken  
19 by one of the -- I'm trying to think of the term or the  
20 title that they use out there, but I can't recall it --  
21 but one of the crime scene people out there?

22 There is a video -- or are you aware  
23 there's a video of the motel room where two uniformed  
24 officers, one a sergeant, one not, go in for -- go into  
25 that motel room for exigent reasons, security check or

1 something like that prior to you guys getting that  
2 warrant?

3 A. I -- I've -- I've never seen that particular  
video, no.

4 Q. Okay. And were you aware of that --

5 A. No.

6 Q. -- conduct?

7 The Sony camera that Ms. Lee -- is that  
8 right? Ms. Lee? Is that her name?

9 A. Whitney Lee, yeah.

10 Q. Whitney Lee. The Sony camera that Whitney Lee  
11 used to take four photographs of the fire scene, you  
12 essentially told her that camera was now evidence and  
13 took it from her, correct?

14 A. Yes.

15 Q. She -- it wasn't -- I mean, once you make them  
16 aware that she had done that, you decided that was --  
17 you were going to seize it, correct?

18 A. Yes.

19 Q. Finally, the Compaq Presario. You went down to  
20 the hospital in Cleburne and spoke to Dr. Ford; is that  
21 correct?

22 A. Yes, sir.

23 Q. Where did you meet up with Dr. Ford?

24 A. In his office.

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1 Q. Excuse me. And that was at Harris Hospital  
2 Cleburne or something like that?

3 A. I -- I believe it used to be called Walls, but  
4 they said it was called --

5 Q. Okay.

6 A. -- Harris Methodist.

7 Q. And this was a desktop computer in his office?

8 A. Yes, sir.

9 Q. Was it his personal computer or his staff or  
10 something like that?

11 A. I believe his personal computer.

12 Q. Okay. Did you process his office for crime  
13 scene or DNA or anything like that to try to determine  
14 who perhaps had been using that computer?

15 A. No.

16 Q. Okay. Did you -- and when you collected it,  
17 you collected the box and left the monitor and the  
18 keyboard and stuff like that, correct?

19 A. Yes, sir.

20 Q. What I would have called a CPU, what I think  
everybody else understands it as CPU. Anyway...

21 MR. CUMMINGS: May I have just one moment,  
22 please, Judge?

23 THE COURT: You may.

24 Q. (BY MR. CUMMINGS) Thank you, Detective.

1 MR. CUMMINGS: Your Honor, I pass the  
2 witness.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MR. BRISSETTE:

6 Q. Detective, do you have Lieutenant Langford's  
7 canine report in front of you?

8 A. I believe I do. Can I have a moment to look?

9 Q. Please.

10 A. No, sir, I don't believe I have Mr. Langford's  
11 report.

12 Q. When Defense counsel asked you if there were  
13 seven samples taken, if Lieutenant Langford processed  
14 eight samples, do you have a definitive source in your  
15 book that you can swear to today?

16 A. No, sir.

17 Q. So when you answered seven because the Defense  
18 threw it out there, is it seven, or do you know?

19 A. I -- I don't have a definitive answer.

20 Q. Do you know what the Tarrant County Arson Task  
21 Force is?

22 A. Yes, sir.

23 Q. What is it?

24 A. It's a -- it's a task force comprised of  
25 several firefighters that are cross-trained in arson

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1 training, and they participate in -- if there's a fire  
2 that cities need their assistance, then they -- they  
3 respond to it.

4 Q. Several. Is it multiple agencies like the 43  
5 here in Fort -- in Tarrant County?

6 A. Yes, sir.

7 Q. Does it include other counties as well?

8 A. Yes, sir.

9 Q. Does it include representatives that may not be  
10 from the fire service like video forensic folks?

11 A. Yes, sir.

12 Q. Did you receive resources from our office as  
13 part of that task force that day?

14 A. Yes, sir.

15 Q. And who was that?

16 A. We received resources from Mr. Porter.

17 Q. In your 128-hour arson class, did you go over  
18 evidence collection?

19 A. Yes.

20 Q. In your classes to become a detective or a  
21 peace officer, did you go over evidence collection?

22 A. Yes.

23 Q. With respect to fire debris, what happens to it  
24 once it leaves the scene? What can happen to it?

25 A. It can -- it can degrade very quickly.



1 Q. With respect to what you observed at the  
2 Kennedale Police Department with Mr. Hummel, did you  
3 have any observations about his clothes that day?

A. Yes.

4 Q. And what were those observations, for the  
5 Court, please?

6 A. That I saw some sort of reddish-brownish  
7 material on -- on his pants.

8 Q. You answered Mr. Cummings that you did not know  
9 if there was any conversation about whether or not a  
10 consent was obtained in your presence. As you've  
11 developed this investigation, are you aware that others  
12 may have had a conversation with him about his clothes?

13 A. Yes.

14 Q. And who would that other person be?

15 A. Agent Steele.

16 Q. The clothes that we see him reenter the video  
17 on at Kennedale PD, whose clothes are those?

18 A. They belong to Sergeant Carlson.

19 Q. Where were the clothes?

20 A. He had them in his office.

21 Q. Defense counsel asked you about how one attains  
22 a VIN number. You are familiar with the computer  
23 systems for law enforcement in the state of Texas, are  
24 you not?

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1 A. I am.

2 Q. Can you look up a license plate from anything  
3 from publicdata.com to the more advanced TLETS that you  
4 have to get a VIN number?

5 A. Yes.

6 Q. You don't need to search one's vehicle to  
7 obtain a VIN number, do you?

8 A. No, sir.

9 Q. Let's talk about this vehicle a little bit  
10 more. Defense counsel asked you if the vehicle had been  
11 towed from the parking spot that it was parked in  
12 legally prior to Detective Darrah's search warrant; is  
13 that correct?

14 A. Yes, sir.

15 Q. Was that vehicle towed after the Defendant had  
16 signed two separate consent to searches for that  
17 vehicle?

18 A. Yes.

19 MR. BRISSETTE: Judge, may I have just a  
20 second?

THE COURT: You may.

22 Q. (BY MR. BRISSETTE) Detective, I'm going to  
23 show you what's been marked for identification purposes  
24 as State's Exhibit PT-32A, as in apple. Do you  
25 recognize what this appears to be?

1 A. Yes.

2 Q. What is it?

3 A. It's the search warrant for the camera.

4 Q. PT-32 is the affidavit; is that correct?

5 A. Yes, sir.

6 Q. Does the District Clerk's Office here in  
7 Tarrant County assign particular numbers to documents  
8 when you file them with the clerk's office?

9 A. Yes.

10 Q. Do you recognize the search warrant number on  
11 PT-32 to be the same as PT-32A?

12 A. Yes.

13 Q. 32A is the actual warrant?

14 A. Yes, sir.

15 Q. Is the City of Kennedale an incorporated city  
16 under the Texas charters?

17 A. Yes.

18 Q. I'm showing you what has been marked for  
19 identification purposes as PT-38. Will you take a  
20 second to look at that, sir?

21 What does PT-38 appear to be?

22 A. It's the order certifying -- declaring that  
23 we're an incorporated city, that Kennedale is an  
24 incorporated city.

25 MR. BRISSETTE: Your Honor, the State will

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1 tender to Defense counsel PT-32A, which is the face  
2 sheet to PT-32; and then PT-38, Articles of  
3 Incorporation for the City of Kennedale. Offer them for  
4 the purpose of this hearing.

5 MR. CUMMINGS: Can we look at 32?

6 MR. BRISSETTE: Yeah.

7 MR. CUMMINGS: Your Honor, we have no  
8 objection to PT-32A for purposes of this hearing, and  
9 nor do we have an objection to PT-38A for purposes of  
10 this hearing.

11 MR. BRISSETTE: Judge, if I may?

12 THE COURT: You may.

13 MR. BRISSETTE: It's 38, not 38A.

14 MR. CUMMINGS: I'm sorry.

15 MR. BRISSETTE: Okay.

16 THE COURT: PT-32A, as in Alpha, and PT-38  
17 are admitted.

18 (State's Pretrial Exhibit Nos. PT-32A,  
19 PT-38 admitted)

20 Q. (BY MR. BRISSETTE) Detective, in your white  
21 binder up there, do you have some printouts from NLETS  
22 Incorporated in your binder?

23 A. Yes.

24 Q. You know what NLETS is, yes?

25 A. Yes.

1 Q. Do you have -- there's two transmittals, I  
2 think, that are in question here. Everybody agrees on  
3 both sides. One is an attempt to locate for a motor  
4 vehicle, and one is a missing persons transmission to  
5 NLETS. Can you locate those two items, sir?

6 A. Sorry. I'm trying to get to the missing  
7 persons report.

8 I have the missing persons one here from  
9 NLETS.

10 Q. All right. Let's start with that one. Prior  
11 to this being entered into NLETS, was there a report  
12 taken by the Kennedale Police Department?

13 A. Yes.

14 Q. And by that, I mean a report for missing  
15 persons?

16 A. Yes.

17 Q. Who took the report?

18 A. Sergeant Goode.

19 Q. And I believe on cross, the Defense asked you,  
20 did you have a conversation with Sergeant Goode on that  
21 Saturday?

22 A. Yes.

23 Q. There's language that goes into the  
24 miscellaneous fields on a missing persons report; is  
25 there not?

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1 A. There is.

2 Q. And I believe on this one, there are five lines  
3 entered into the NCIC; is that correct?

4 A. Yes.

5 Q. On the miscellaneous, or the M-I-S field?

6 A. Yes.

7 Q. The language that was placed in here by  
8 Kennedale PD, how did it come about?

9 A. I'm -- I'm not real sure, sir.

10 Q. Well, let's go through this. What did you know  
11 at that point? Did you know whether or not Mr. Hummel  
12 had served in the military prior to the NCIC  
13 transmission on Saturday afternoon?

14 A. Yes. The information we got came from the  
15 interviews that we had with him before and the  
16 information that we had learned throughout the  
17 investigation up to that point.

18 Q. Did you incorporate your observations on how  
19 the individual was acting when you entered this  
20 information in as well?

21 A. Yes.

22 Q. Can you tell us what the -- the miscellaneous  
23 field states?

24 A. Want me to read it directly from here?

25 Q. Please.

1 A. "Law enforcement sensitive. Subject possibly  
2 mentally unstable. Person of interest in homicide.  
3 Considered armed and dangerous. Approach with caution.  
4 Subject has military background. Do not arrest or  
5 detain based on this record. If located, contact  
6 Kennedale PD 817-478-5416, advise location and direction  
7 of travel."

8 Q. Do you include as part of that missing person a  
9 vehicle license plate number?

10 A. Yes.

11 Q. Do you include the make and model of the  
12 vehicle as well?

13 A. Yes.

14 Q. Anywhere in here does it say arrest the  
15 individual?

16 A. No.

17 Q. Prior to the missing persons report being  
18 taken, there's a parallel set of investigations going on  
19 at the PD that afternoon, are there not?

20 A. Yes.

21 Q. Had you learned any information from  
22 Dr. Peerwani's office yet as to the victims?

23 A. Yes.

24 Q. What had you gathered at that point from  
25 preliminary reports?

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1 A. That one of them had been stabbed to death and  
2 one of them was considered a -- a homicide.

3 Q. Would somebody suffering stab injuries be  
4 inconsistent with a -- a fatality in a fire?

5 A. Yes.

6 Q. So you had a homicide at one point?

7 A. Yes.

8 Q. Did you know the cause of death yet for the  
9 male or the child yet?

10 A. No, sir.

11 Q. Can you find the attempt to locate, please?

12 Detective, would it help if I told you  
13 originally when I imaged your notebook, it was behind  
14 some consent to search forms? Because that's what  
15 sequence it is. It's 146 pages in.

16 A. Probably not because --

17 MR. BRISSETTE: Judge, may I approach?

18 THE COURT: You may.

19 MR. CUMMINGS: Actually, what I'd like to  
20 do, can we project so the Judge can benefit from this  
21 too? Do you have any problem with that?

22 MR. BRISSETTE: Do you have any problem  
23 with me printing them out and mark them?

24 MR. CUMMINGS: Okay.

25 MR. BRISSETTE: Judge, I think we have an

1 agreement between the parties that we will print out  
2 what we just talked about, which is an NLETS printout  
3 from a terminal that Kennedale PD, that shows the  
missing persons report. There's some language on either  
side of it as a header on the documents that the State  
and Defense have as part of discovery.

7 THE COURT: Does the NLETS report contain  
8 confidential information or, you know, personal data?

9 MR. BRISSETTE: The personal data would be  
10 the same data that would be on the top of an Indictment  
11 for a defendant at this point.

12 THE COURT: Well, does it contain like a  
13 Social Security number or --

14 MR. BRISSETTE: No, sir.

15 THE COURT: Okay. All right. That's fine.

16 MR. BRISSETTE: And then the attempt -- the  
17 attempt to locate his vehicle information in it, VIN  
18 numbers stuff that we talked about in court today.

19 Those -- we can make that, I guess, two separate  
20 exhibits called the attempt to locate State's 40, and  
21 State's PT-39 would be the NCIC missing persons.

22 THE COURT: All right. Why don't you go  
23 ahead and print that out? If you want to take a quick  
24 break so you can accomplish all that, that's fine.

25 MR. BRISSETTE: Okay.

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1 THE COURT: We'll be in recess.  
2 (Recess from 2:56 p.m. to 3:27 p.m.)  
3 (Open court, Defendant present)

4 THE COURT: You may proceed.

5 MR. BRISSETTE: Your Honor, before we took  
6 the break, the State was going to print two documents  
7 from the discovery that the Defense has. We've now done  
8 that and labeled one PT-39, which is the printout from  
9 NLETS with the missing persons report attached to it for  
10 purposes of NCIC; and PT-40, which is a printout of the  
11 NLETS for attempt to locate vehicle that actually was  
12 printed by the Oceanside Police Department through a  
13 rebroadcast from the California Department of Justice.  
14 I've shown Defense Counsel both of these, and we offer  
15 these at this time, PT-39 and PT-40.

16 MR. CUMMINGS: These are by agreement, Your  
17 Honor. We have no objection.

18 THE COURT: All right. PT-39 and 40 are  
19 admitted.

(State's Exhibit Nos. PT-39,  
PT-40 admitted)

22 Q. (BY MR. BRISSETTE) Detective, if you could,  
23 could you take us through PT-39 that's on the screen  
24 right now? What are we looking at here?

25 A. This is an NCIC printout of a missing person.

1 Q. All right. The MIS areas, can you show us that  
2 on PT-39, what you were reading for the Court before we  
3 admitted this?

4 A. This area, these five lines right here.

5 Q. All right. Where it starts with M.K.E. or Mike  
6 just above --

7 A. Right here?

8 Q. Yes, sir.

9 A. Yes, sir.

10 Q. From that down, are you the best person in the  
11 police department to explain how these individual fields  
12 work and how the data is filled in to the right side of  
13 that -- the hash mark or the slash mark?

14 A. No, sir.

15 Q. And would that be best left for one of the  
16 dispatchers?

17 A. Yes, sir.

18 Q. Do you know the date and time that this was  
19 entered?

20 A. The date is right here, 12/19/2009 at 18:22  
21 Eastern Standard Time.

22 Q. PT-40, do you understand what this is, sir?

23 A. Yes, sir.

24 Q. What is this?

25 A. It's attempt to locate broadcast.

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1 Q. And what date and time was this entered into  
2 NLETS or NCIC?

3 A. It was entered on 12/20 at 15:40 hours Central  
4 Standard Time.

5 Q. So a day after, roughly, that PT-39 was  
6 entered?

7 A. Yes, sir.

8 MR. BRISSETTE: Pass the witness.

9 THE COURT: Recross?

10 RECROSS-EXAMINATION

11 BY MR. CUMMINGS:

12 Q. Detective Charbonnet, can you tell the Court  
13 when the missing person report was filed or taken by  
14 Sergeant Goode?

15 A. Can you give me just a moment?

16 Q. Please.

17 A. It was taken on 12/19/2009 at 15:18 hours,  
18 according to the report.

19 Q. And without putting PT-39 back up on the board,  
20 it was just a couple of hours later he would have put it  
21 into the system?

22 A. Yes.

23 Q. Thank you.

24 MR. CUMMINGS: That's all I have for  
25 Detective Charbonnet, Your Honor.



1 THE COURT: All right, Detective. You may  
2 step down.

3 THE WITNESS: Thank you.

4 MR. MOORE: We would ask that he remain  
5 subject to recall.

6 THE COURT: You're subject to recall.

7 THE WITNESS: Yes, sir.

8 (Witness retires)

9 THE COURT: State, call your next witness.

10 MR. GILL: We call Jorge Bernal.

11 (Witness enters courtroom)

12 THE COURT: Jorge Bernal?

13 THE WITNESS: Yes, sir.

14 THE COURT: Please raise your right hand.

15 (Witness sworn)

16 THE COURT: Please be seated, sir.

17 You may proceed when you're ready.

18 JORGE BERNAL,

19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GILL:

22 Q. Please tell the Judge your name.

23 A. Jorge Bernal.

24 Q. Pull the -- thank you very much.

25 A. Jorge Bernal.

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1 Q. And how are you employed or occupied?

2 A. I am employed by U.S. Customs and Border  
3 Protection.

4 Q. You're in uniform today. Are those your dress  
5 blues you're wearing today?

6 A. Yes, sir.

7 Q. All right. How long have you been employed by  
8 Customs and Border Protection?

9 A. Three years, four months.

10 Q. What did you do before you went to work for  
11 Customs and Border Protection?

12 A. I was with TSA for two years.

13 Q. And for those of us that don't know, is that  
14 Traffic -- Transportation Safety Administration?

15 A. Transportation Security Administration.

16 Q. And how about before that?

17 A. I was working construction.

18 Q. Did you do anything else before you were in  
19 construction?

20 A. I did four years of active duty in the United  
21 States Marine Corp.

22 Q. And did you receive an honorable discharge from  
23 the Marines?

24 A. Yes, I did, sir.

25 Q. After your release from your -- your first

1 commitment to the Marines, did you join the reserves?

2 A. Yes, sir.

3 Q. And how long did you serve in the Marine  
4 Reserves?

5 A. Four years as well.

6 Q. And what rank did you reach?

7 A. Sergeant.

8 Q. Now, is United States Custom and Border  
9 Protection under the umbrella of the Department of  
10 Homeland Security?

11 A. Yes, sir.

12 Q. And do you have to undergo a period of training  
13 before you can become an officer with the Customs and  
14 Border Protection Service?

15 A. Yes. We go to the federal law enforcement  
16 training in Glynco, Georgia for 16 weeks, is when I  
17 went.

18 Q. Approximately when did you do that 16 weeks  
19 training?

20 A. It was September of 2007.

21 Q. And when you -- I take it you graduated?

22 A. Yes, sir.

23 Q. And upon graduation, what rank did you achieve?

24 A. Of U.S. Custom and Border Protection officer.

25 Q. As a Customs and Border Protection officer, do

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1 you undergo periodic retraining?

2 A. Yes, sir.

3 Q. And approximately how often do you do that?

4 A. It ranges. It was some erratic training,  
5 training whether it's continuous training on defensive  
6 tactics or firearm or any changes in the law, anything  
7 like that. It's very often, actually.

8 Q. Are those some of the same subjects that you're  
9 taught in your initial academy?

10 A. Yes, sir.

11 Q. What are some of the other things that you  
12 learned in your initial academy, your initial training?

13 A. Customs law, immigration law, anything --  
14 anything involving state law where we're going to be  
15 working at, and as well as defensive tactics and  
16 anything involving arresting or seizures or, you know,  
17 the training with our sidearm that we are required to --  
18 to carry.

19 Q. So you're commissioned to carry a sidearm,  
20 also; is that correct?

21 A. Yes, sir.

22 Q. Did you receive any of the same training in  
23 your -- in -- in the Marines?

24 A. Yes, sir.

25 Q. What type of training did you receive in the

1 Marines that's applicable to your -- your duties today?

2 A. Defensive tactics and weapons training.

3 Q. I take it you received -- the part of the  
4 defensive tactics and weapons training you received in  
5 the Marines is part of their basic training program?

6 A. That is correct.

7 Q. That all Marines have to go through in order to  
8 become a Marine?

9 A. Yes, sir.

10 Q. So what are your job duties today with Customs  
11 and Border Protection?

12 A. I am assigned back to the -- as a primary  
13 officer. I was -- before this, I was with the team that  
14 dealt with anybody leaving the country, and we would  
15 inspect them as we would people entering the country, so  
16 now I'm assigned to inspecting people before they enter  
17 the country.

18 Q. And how long have you been assigned to inspect  
19 people before they enter the country?

20 A. Since -- I'm back again assigned to that since  
21 October of this year -- of last year, I'm sorry.

22 Q. So were you assigned to that same job back on  
23 December 20th of 2009?

24 A. Yes, sir.

25 Q. On December 20th of 2009, were you assigned as

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1 a primary officer inspecting people as they entered and  
2 applied for admission?

3 A. Yes, sir.

4 Q. And where are you assigned? Where within the  
5 United States are you assigned?

6 A. I'm assigned at the San Ysidro Port of Entry in  
7 San Ysidro, California.

8 Q. What part of California is that in?

9 A. Southern California, borders Mexico.

10 Q. Is it near a major U.S. city?

11 A. Yes, sir.

12 Q. Which one?

13 A. San Diego.

14 Q. Is it near a major city in the country of  
15 Mexico?

16 A. Yes, sir.

17 Q. Which one?

18 A. Tijuana, Mexico.

19 Q. So is there a lot of traffic between the United  
20 States and Mexico at that port of entry?

21 A. Yes, sir. It's the biggest and busiest in the  
22 world.

23 Q. Do you have an estimate as to the number of --  
24 of pedestrians on average pass through your port of  
25 entry every day?

1 A. It varies throughout the week and throughout

2 the time of year, but it's in the thousands, many  
3 thousands. I don't have an exact number for you.

4 Q. If we were told by Border Protection Officer  
5 Herb Day that you average 10,000 pedestrians a day, is  
6 that -- does that sound like an accurate number?

7 A. Yes, sir.

8 Q. How about number of vehicles per day?

9 A. A lot more.

10 Q. A lot more?

11 A. Yes, sir.

12 Q. I take it the San Ysidro Port of Entry is an  
13 inter -- port of international entry?

14 A. Yes, sir.

15 Q. It's an international port?

16 A. Yes, sir.

17 Q. Between the country of the United States and --

18 A. And Mexico.

19 Q. -- Mexico?

20 A. Yes, sir.

21 Q. And Mexico is a foreign country?

22 A. That's correct.

23 Q. So when you talk about people coming to you as  
24 a primary officer and applying for admission, they're  
25 applying for admission to the United States?

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1 A. Yes, sir.

2 Q. And they are applying for admission and they're  
3 coming from the country of Mexico?

4 A. Yes, sir.

5 Q. Could you briefly describe to the Judge the  
6 port area that you work in?

7 A. Yes, sir. It's -- we neighbor Tijuana,  
8 Tijuana, Mexico, north, northwest part of Mexico; and  
9 it's the port that we have -- the major international  
10 airport, which is on the U.S. side, is San Diego  
11 Lindbergh, and on the Mexican side is Tijuana  
12 International Airport.

13 And we have people flying to Tijuana from  
14 anywhere in the world, and then they apply for entry in  
15 San Ysidro from -- from Tijuana, Mexico. It's -- we're  
16 located in the southwest area of the United States.

17 Q. Now, we think of -- of you being a port of  
18 entry from the country of Mexico. Is your -- is -- are  
19 the people applying to admission to the United States  
20 from that port strictly Mexicans?

21 A. No, sir.

22 Q. Do they -- where else do you receive people --

23 A. Anyone and everyone in the world that they can  
24 get to Tijuana from, they'll be applying for entry at  
25 San Ysidro Port of Entry.

1 Q. What are some of the other major ethnic groups  
2 that come through that port from the country of Mexico?

3 A. We get a lot of people from Somalia, we get a  
4 lot of people from the -- Iraq, from everywhere and  
5 anywhere, Asia, you know, Saudi Arabia, from all over  
6 the world.

7 Q. Do you see a lot of Russians come through?

8 A. Not a lot, but we do have quite a few that come  
9 through.

10 Q. How about Iranians?

11 A. Yes.

12 Q. Now, what -- where specifically within the port  
13 of entry are you assigned?

14 A. I could be assigned anywhere as a primary  
15 officer. It could be the primary lanes, vehicle lanes  
16 or the primary pedestrian lanes, which is where I was  
17 assigned when the gentleman applied for entry into the  
18 United States.

19 I could be assigned to clear any vehicle or  
20 person that was assigned to vehicle secondary or  
21 pedestrian secondary, as well as we have officers -- we  
22 have people that travel into the United States, and they  
23 have visitor's visa, and that allows them to enter the  
24 United States up to 25 miles. And within the 25  
25 miles -- miles, they can stay up to 30 days. Anything

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1 beyond that distance or that time frame, they have to  
2 get -- obtain a I-94, which is a permit for them to go a  
3 further distance or a longer -- stay for a longer period  
4 of time. And I could also be assigned to that, which is  
5 called the old port -- old port offices, and there's  
6 where I would issue them their permits.

7 Q. So would it be a fair statement that when you  
8 report for work on any given day, you could be assigned  
9 to a number of different -- any one of a number of  
10 different duty stations?

11 A. That's correct. There's many more, but, yes.

12 Q. Okay. And is there a security reason for that?

13 A. Yes, we have to --

14 Q. Is there --

15 THE REPORTER: I'm sorry. Could you wait  
16 till he finishes the question before asking the next  
17 question?

18 MR. GILL: I'm sorry. I'm -- I'm trying to  
19 ask two questions at once.

20 Q. (BY MR. GILL) Is there a security reason for  
21 you being assigned to different locations within the  
22 port?

23 A. Yes. They have to rotate us around everywhere  
24 and anywhere. It doesn't -- it doesn't repeat itself  
25 from week to week because we deal with people trying to

1 kind of like obtain knowledge as to how we operate

2 and -- and try to find weaknesses in any of our

3 different areas of the port of entry as to who might be

4 the officer that inspects you the more, the most, who

5 inspects you the least. And they might be -- want to

6 find that out and find out where you might be assigned,

7 so if they are trying to bring something into the

8 country, there's a better chance of them being

9 successful.

10 Now, by them alternating where we are

11 assigned and assigning us in different areas, it's

12 harder for them to -- to obtain that knowledge from us

13 as to how we operate.

14 Q. Is security a serious concern at the port?

15 A. Yes, sir.

16 Q. When you -- when you go to work on a given day,  
17 how are you dressed?

18 A. We have different uniforms that we can wear.

19 Since mostly a primary officer, I wear BDUs, which are

20 the most comfortable, most -- we do get involved in

21 chases or taking people down, aggressive people, so

22 that's the one I personally wear. And there's BDUs,

23 tactical boots and, you know, my duty belt, my weapon

24 and my bulletproof vest, everything.

25 Q. Do you wear a uniform?

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1 A. Yes, sir.

2 Q. Does your uniform -- do you wear a badge?

3 A. Yes, sir. If it happens to be the BDUs, they

4 will not have this badge showing, the actual badge

5 showing. It will be a patch. It is the exact same --

6 resembles our exact -- our actual badge.

7 Q. And your -- your patches contain language that  
8 identify you as a -- as a border protection agent?

9 A. Yes, sir.

10 Q. Is that correct?

11 A. Yes, sir.

12 Q. You carry a sidearm?

13 A. Yes, sir.

14 THE COURT: I have a question. I

15 understand you using acronym BDU. What does that stand  
16 for.

17 THE WITNESS: Well, different agencies

18 refer to it different, even throughout the military, but

19 it is -- it is --

20 THE COURT: Is that battle dress uniform?

21 THE WITNESS: In the military, yes, but

22 we're not technically in battle, but that is correct.

23 THE COURT: All right. Thank you.

24 Q. (BY MR. GILL) It's a battle-type article of  
25 clothing; is that correct?

1 A. Yes, sir.  
 2 Q. Something you can move around in?  
 3 A. Yes, sir.  
 4 Q. Let me show you what has been marked as State's  
 5 Exhibit No. 41, which I can -- have -- you've seen this  
 6 before, haven't you?  
 7 A. Yes, sir.  
 8 Q. Now, State's Exhibit 41 contains a diagram of  
 9 the -- of the port area where you were; is that correct?  
 10 A. Yes, sir.  
 11 Q. And it also contains a number of different  
 12 photographs that correspond to different areas of the  
 13 port --  
 14 A. That is correct.  
 15 Q. -- is that also correct?  
 16 Have you had a chance to -- to look over  
 17 the diagram which -- which is in the middle of the  
 18 exhibit?  
 19 A. Yes, sir.  
 20 Q. And without it being to scale, is that a fairly  
 21 accurate representation of the port area?  
 22 A. Yes, sir.  
 23 Q. Have you also had a chance to exam the  
 24 photographs which are contained -- they're sub-marked A  
 25 through K?

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1 A. Yes, sir.  
 2 Q. And do you recognize the scene depicted in each  
 3 of the photographs?  
 4 A. Yes, sir.  
 5 Q. And is each of those photographs an accurate  
 6 depiction of the port as it appeared back in December of  
 7 2009?  
 8 A. Yes, sir.  
 9 MR. GILL: Your Honor, at this time we'd  
 10 offer State's 41.  
 11 MR. CUMMINGS: We have no objections to  
 12 State's 41. I guess it's PT-41, for purposes --  
 13 MR. GILL: That's correct.  
 14 MR. CUMMINGS: -- of this hearing.  
 15 THE COURT: All right. 41 is admitted.  
 16 (State's Pretrial Exhibit No. 41 admitted)  
 17 Q. (BY MR. GILL) Okay. Officer, what I'd like  
 18 you to do is let's just walk the Judge through what we  
 19 see on the diagram, first of all, and then we can talk  
 20 about what's contained in the photographs, all right?  
 21 A. Yes, sir.  
 22 Q. Let's just -- let's just walk -- walk through  
 23 as a person would enter from the country of Mexico. And  
 24 can you show the Judge what a person would go through to  
 25 enter from the country of Mexico?

1 A. Mexico would be here. Anything beyond this  
 2 point is a line which kind of shows it here. It's a  
 3 white line with yellow stripes going, and it tells you  
 4 anything beyond this point, which would be facing  
 5 this -- facing going down this way, the United States.  
 6 Anything behind that point is Mexico, which it would be  
 7 up here. So as -- as you're walking, you're walking  
 8 from the south to north. South being here, north being  
 9 down here. And --  
 10 Q. So south is at the top of the diagram and north  
 11 is at the bottom of the diagram?  
 12 A. That's correct.  
 13 Q. And when you were -- you were -- you were  
 14 referring to the signage for the international border,  
 15 you were referring to number -- Photograph No. B?  
 16 A. Photograph No. B is correct.  
 17 Q. And that is signage that warns someone that  
 18 they are, in fact, crossing the international border at  
 19 that point; is that correct?  
 20 A. Yes, sir.  
 21 Q. Okay. And what happens next?  
 22 A. Well, depending on the traffic of the amount of  
 23 traffic of pedestrians coming across the border, as you  
 24 can see in picture No -- picture letter A, there's  
 25 always -- for the most part always a line -- a huge line

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1 of people trying to enter the country.  
 2 Q. Is that looking back into Mexico --  
 3 A. That's looking south back into Mexico from --  
 4 from our gate, which would be this gate here. And we  
 5 either allow them to go through the turnstile door,  
 6 which is on the left side on picture F, or the actual --  
 7 there's an actual door there with a key pad that we --  
 8 numbered key pad, and we have the numbers to -- or the  
 9 code to open it up. And only those -- only the officers  
 10 have the code to that.  
 11 So as they are traveling north, these are  
 12 pictures facing north. They would have to come through  
 13 this gate either through the turnstile or the actual  
 14 door itself. Once they have gone past that point,  
 15 there's no going back because we will not allow them,  
 16 unless as you walk a little further north, there's a  
 17 building to the right as you're traveling north, which  
 18 is the -- it's called the old port, Picture C, and  
 19 that's where we issue the I-94s, the permits to  
 20 travelers with visitor's visas.  
 21 So those people, if they wish to go back to  
 22 Mexico, we would allow them if it shows they were issued  
 23 an I-94, because a lot of people tend to park in Mexico,  
 24 cross-walk to obtain their I-94s, and they go back and  
 25 get their car and then enter the United States through



1 the vehicle primarily lanes. So that is -- once you've  
2 entered, if you are -- if you don't -- if you do not  
3 need an I-94, you will continue to walk north, go just  
4 past the old port on the right-hand side, which will be  
5 looking something like this here on Picture G. They're  
6 walking. That's -- it's called the tunnel area.  
7 They're about to enter the tunnel -- the indoor part of  
8 the tunnel there, and as you can see, we -- from the  
9 beginning when they're about to enter the country,  
10 there's signage everywhere. We have signs everywhere.

11 They're walking here, which at this point  
12 they're traveling around this area here traveling north,  
13 and they are about to approach the doors where you  
14 actually make it into the indoor part of the tunnel.

15 And there's the doors on Picture D, so once  
16 you make it past that point, there's even more signs. I  
17 don't see any more pictures on that.

18 So once -- once you make it past that,  
19 it's -- it's quite -- quite a long hallway, quite a long  
20 tunnel. And then eventually, the traveler will make it  
21 to where the primary officer would be in this area of  
22 the exhibit here, which shows the booths where the  
23 officer would be on Picture J as well as K.

24 And as you can see -- I don't know if you  
25 can tell -- there's even more signs there explaining to

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1 them what is required from them to enter the country,  
2 that they are actually about to make entry into the  
3 United States, different sides for whether they have  
4 passports or not, because some travelers still, if they  
5 happen to use them, some do still travel with only an ID  
6 card because they don't have anything else or birth  
7 certificate and no ID or, you know, or actual passport,  
8 or if they happen to be a resident of the United States,  
9 they have resident cards. And also there's signage  
10 everywhere.

11 As they are about to approach our booths,  
12 which, as you can see on Picture J and K -- this would  
13 be a picture from the traveling public as they are about  
14 to approach our booths. We tend to have booths that --  
15 there will be a booth -- I'll be assigned to a booth,  
16 which I'm facing another officer, so he's taking care of  
17 one person, I'm taking care of another person. And they  
18 go in between both of us. And then there will be an  
19 officer behind me and an officer in front of me, which  
20 is next to that officer, face away from me because he's  
21 next to the officer that is directly to the side of me  
22 at an angle.

23 So when we're in the primarily pedestrian  
24 lanes, we can see a portion of the public who's waiting  
25 to make entry into the United States, as well as

1 secondary, which would be past that point.

2 So if -- when we have anybody trying to  
3 make entry into the United States, if there's any kind  
4 of issue, whether they don't have enough documentation  
5 and we do not have enough documentation in front us to  
6 be sure that they are who they say they are as far as  
7 being a U.S. citizen or a resident or visitor, if  
8 there's any kind of checking that we need to be -- to  
9 have done, we refer them to south secondary.

10 Now, if -- if there's something more  
11 serious that might come up when we run their information  
12 on the -- on our computers, then we refer them to the  
13 port enforcement team, whether it's -- if they have any  
14 warrants -- any warrants, if they happen to be  
15 missing -- because we do get a lot of minors as well  
16 that will come up as missing.

17 So anything -- anything more than either  
18 lacking documents or having priors with us as far as  
19 trying to smuggle people or narcotics, they will go to  
20 south secondary. If it's something more serious, then  
21 they go to a port enforcement team, which would be -- as  
22 you're making entry into the United States, it would be  
23 to the right, to the east part of the port.

24 THE COURT: All right. Thank you.

25 THE WITNESS: Yes, sir.

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1 Q. (BY MR. GILL) The blue rectangles on the  
2 diagram, do those represent -- represent the booths  
3 where the primary officers are stationed?

4 A. That is correct.

5 Q. And if -- if an individual wants to make entry  
6 into the United States, they would have to present  
7 themselves to an officer at one of the primary booths;  
8 is that correct?

9 A. That's correct.

10 Q. On December the 20th of 2009, were you assigned  
11 to work one of those primary booths?

12 A. Yes, I was, sir.

13 Q. And as an officer assigned to work one of the  
14 primary booths, what are your duties?

15 A. To, number one, inspect the traveling public,  
16 make sure that they do have the proper documents to  
17 enter into the United States and also make sure that  
18 they're not bringing any -- anything that is illegal in  
19 the sense of narcotics, for instance, or weapons. If  
20 you suspect anything, then we might check them further  
21 at that point. So first and foremost is to make sure  
22 that they -- they are legally able to enter the United  
23 States.

24 Q. And -- and I take it it's -- it's necessary for  
25 you to wear your sidearm when you're conducting that

1 duty?

2 A. Yes, sir.

3 Q. What are some of the security concerns that  
4 arise when you're working that booth as a primary  
5 officer?

6 A. Security concerns is we have travelers that are  
7 either wanted in any way, shape or form by local, state  
8 or federal authorities, and especially now that we are  
9 required to run everybody and anybody that crosses the  
10 border for wants and warrants, they might be wanted and  
11 they might try to flee from us, or they might try to  
12 attack us to try to get away. And that's one of the  
13 major security concerns there, as well as after 911,  
14 trying to bring any -- anything that could cause harm to  
15 others, you know, that -- whether it's explosives or --  
16 or anything. Everything and anything that could cause  
17 harm to people.

18 Q. So I take it security is -- is a major concern  
19 at this port of entry?

20 A. Yes, because you are entering the country.

21 Q. And are you concerned for your own security?

22 A. Yes, sir.

23 Q. Are you concerned for the security of the other  
24 people in the -- waiting in line to legally enter and  
25 conduct their legal business?

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1 A. Yes, sir.

2 Q. As well as other officers?

3 A. Yes, sir.

4 Q. Okay. At any given time in this -- in this  
5 queue area waiting to get into the country, there are a  
6 number of people.

7 A. A great number of people, yes, sir.

8 Q. Is this -- is this port area busy 24 hours a  
9 day?

10 A. 24 hours a day, yes, sir.

11 Q. Now, a minute ago you were talking about --  
12 about running someone to see if they were wanted  
13 anywhere. How do you accomplish that at the -- at the  
14 primary booth?

15 A. We -- through our computer, we have different  
16 programs that we use as far as to run the person. We  
17 submit their information, you know, first name, last  
18 name, date of birth.

19 And then it'll run through different  
20 databases, and if anything comes back, then -- you know,  
21 then we go from there, depending on what comes up as far  
22 as whether they're wanted, whether they have priors with  
23 us, anything. Everything and anything.

24 Q. What system are you -- are you querying at that  
25 point?

1 A. We use -- it's called -- well, the actual  
2 program used is Pedestrian, but it uses different  
3 systems.

4 Q. Okay.

5 A. And they have made so many changes lately that  
6 I -- I'm not even sure exactly.

7 Q. It's your understanding that your querying  
8 major law enforcement databases at that point?

9 A. Yes.

10 Q. As well as a terrorist watch list?

11 A. Yes, sir.

12 Q. Just one other question about the -- about the  
13 entry tunnel here. By the time an individual gets to  
14 your position up here at the -- at -- at a primary  
15 booth, have they gone through any type of metal detector  
16 or -- or other security screening?

17 A. No metal detectors, no, nothing like that.

18 Q. I take it you have a computer monitor with you  
19 there in the booth?

20 A. That is correct.

21 Q. So you can tell what's going on.

22 So take us through the procedure as -- if a  
23 person walks up to you and you're in the primary booth,  
24 they apply for admission into the United -- United  
25 States, take us through the procedure that you go

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1 through to check that individual's documentation and  
2 determine whether or not they should be allowed to  
3 enter.

4 A. Okay. As the person approaches the primary  
5 pedestrian booth, as soon as they present themselves to  
6 myself, I will first obtain from that person whatever  
7 they have, whether it's the -- if they happen to be a  
8 U.S. citizen, the passport, lack thereof. If they have  
9 any form of ID, government ID to be accompanied by the  
10 birth certificate, or unless they happen to be a  
11 resident of the United States, a resident card or  
12 visitor visas, stuff like that. If they have what  
13 they're required to have by law, then after that, I'll  
14 go ahead and ask them, you know, what is the -- the  
15 purpose of your visit to Mexico, as well ask them if  
16 they're bringing anything back from Mexico with them.

17 And if they are not and I feel comfortable  
18 with -- with their story, then I'll admit them into the  
19 United States. If they're lack -- lacking documents  
20 trying to enter the United States, then I will -- after  
21 I run them, I will still refer them to south secondary  
22 so they can further check, whether it's by  
23 fingerprinting them or running any of the other systems  
24 we might have as far as immigration systems to double  
25 check their status.

1 Q. So if an individual does not satisfy you that  
2 they have the proper documentation or if you feel  
3 there's something amiss with that person, you can refer  
them to an additional inspection?

4 A. Yes, sir.

5 Q. And that is known as soft secondary?

6 A. Soft secondary, yes.

7 Q. And if they present -- if you feel like they  
8 present a greater threat or if they meet certain  
9 criteria, you can send them to the port enforcement  
10 team?

11 A. Yes, sir.

12 Q. And that's also known as secondary; is that  
13 correct?

14 A. Yes, sir.

15 Q. And that's a different area from soft  
16 secondary?

17 A. Yes. It's a secure location. You have to have  
18 a code to go in there. Once you go in there, you  
19 will -- we'll give you a full pat-down to check for  
20 weapons or anything, and we will hold you there until we  
21 can find out the information that we're lacking. Or if  
22 you happen to be transporting a car with narcotics, then  
23 we can go -- as far as if it's hidden within the person,  
24 then we can request anything else that we might need

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1 after that to go to the hospital, you know, for them to  
2 pass drugs or anything like that.

3 So that's why they would go to that area  
4 because they're not -- because we need to make sure  
5 they're not going to go anywhere at that point.

6 Q. If an individual -- well, do you ask everybody  
7 that presents themselves to you the same series of  
8 questions?

9 A. Not the same series of questions. I can ask  
10 them different types of questions to obtain the same  
11 information that I want. One is to make sure that they  
12 are admissible to the United States, and, two, that  
13 they're not bringing anything into the United States  
14 that is illegal or is going to cause harm to anybody.

15 Q. Do you -- if they -- if they are -- are trying  
16 to portray themselves as United States citizens, do you  
17 inquire of them what their business was in Mexico?

18 A. Yes, sir.

19 Q. And you have broad authority to do that?

20 A. Yes, sir.

21 Q. Are you familiar with the Western Hemisphere  
22 Travel Initiative Program?

23 A. Yes, sir.

24 Q. Under that program, what is considered  
25 acceptable identification for a person presenting

1 themselves for entry into the United States?

2 A. U.S. passport if they happen to be U.S.  
3 citizens, also an enhanced driver's license, which some  
4 states do offer that for their citizens of the  
5 residence, and so we accept that as a valid travel  
6 document to enter the United States as far as U.S.  
7 citizens is concerned.

8 Q. Does Texas feature an enhanced driver's  
9 license? Do we offer an enhanced driver's license?

10 A. Texas does not.

11 Q. So if an individual shows up at your primary  
12 booth and presents themselves for admission into the  
13 United States claiming to be a United States citizen and  
14 only presents a Texas driver's license, have they  
15 presented to you proper documentation for entry?

16 A. No, sir.

17 Q. Okay. So what do you do at that point?

18 A. Then I -- I am required to run them  
19 automatically.

20 Q. Let me direct your attention to January, back  
21 to January 20th of 2009, and ask you if you were at work  
22 approximately 5:48 that morning?

23 A. Yes, sir.

24 Q. And did an individual present himself to you  
25 for admission at approximately 5:48 a.m. on December

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1 20th of 2009?

2 A. Yes, sir.

3 Q. Do you see that individual in the courtroom  
4 today?

5 A. Yes, I do, sir.

6 Q. Could you please point him out and describe  
7 what he's wearing today?

8 A. He's to my front right side, and he's wearing a  
9 green outfit, green jumpsuit, seems like.

10 MR. GILL: Your Honor, will the -- may the  
11 record reflect he's identified the Defendant?

12 THE COURT: The record will so reflect.

13 Q. (BY MR. GILL) Did you notice this individual,  
14 the Defendant over here to my left, when he was in line  
15 getting ready to approach the primary booths?

16 A. I noticed him shortly before he was about to  
17 approach me, yes, because from the view we have before  
18 they approach us.

19 Q. And what did you notice about him?

20 A. I noticed he was expressionless.

21 Q. And what does that mean to you?

22 A. I mean, based on my training and experience of  
23 working there dealing with so many people is that it  
24 just told me there was something wrong with him for --  
25 for whatever reason, which I didn't know, and that I was

1 going to make sure to check him thoroughly before  
2 allowing -- I allowed him to enter the United States.

3 Q. And did he ultimately approach the primary  
4 booth where you were working?

5 A. Yes, sir.

6 Q. And would you lead the Judge through your  
7 exchange with him after he approached the booth where  
8 you were working?

9 A. Yes, sir. As best as I can remember, he  
10 approached my booth, and like I said, he didn't appear  
11 to have any expression on his face, so I was wondering  
12 what could be going on with him.

13 And he presented a Texas driver's license  
14 and Texas driver's license only, and at that point I  
15 would -- I asked him, you know, what's your citizenship,  
16 which he replied by saying, U.S. citizen.

17 And I asked him if he had anything else  
18 besides just a Texas driver's license because that was  
19 not enough for -- for him to prove to me that he was a  
20 U.S. citizen. He said no.

21 So then as I'm looking at him, I start  
22 running his name on the computer, and I ask him what  
23 were you doing in Mexico, what was the reason for your  
24 visit to Mexico, and he said that he went to Mexico to  
25 clear his mind out and didn't say much after that.

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1 And I asked him, so what are you doing out  
2 here? What were you doing in Mexico, what brings you  
3 out here. And I asked him if -- if he's staying in  
4 California. He said he came down here, that he was --  
5 he was staying in San Diego area, and for what reason,  
6 and he said, just to have fun.

7 And as I'm getting that information out of  
8 him, you know, I asked him, are you bringing anything  
9 back from Mexico? No.

10 So by that time -- give or less around that  
11 time, after running his name, the information comes up  
12 in front of the screen. At that point he comes up on my  
13 computer screen as armed and dangerous, and when that  
14 happens the -- what's -- it's a big, red, square red box  
15 that says A&D.

16 THE REPORTER: I'm sorry?

17 THE WITNESS: A&D.

18 And when that happens, the officer in front  
19 of me, the officer behind me, whatever they're doing,  
20 that's going to take over their computer screens. It's  
21 going to show A&D, for them to respond to my group, as  
22 well as soft secondary -- officers from soft secondary  
23 in their screens, that will show -- it will show where  
24 our management is, our supervisor, which is an area  
25 that's called the fish bowl, which they will receive

1 everything from there and which is located -- that  
2 office is closer to where the vehicles enter the United  
3 States. They will see that as well as waiting for -- to  
4 hear anything on the radio as far as, you know, if we  
5 need help, any more help because everybody that is in  
6 the pedestrian side since I was assigned to a pedestrian  
7 side, we'll be aware of that. And also on the -- where  
8 we issue the permits, they will know that as well  
9 because if it was something major, they can come and  
10 assist us from the old port area.

11 So everybody's pretty much aware, even the  
12 port enforcement team, which that person will eventually  
13 go to, they are aware that that's happening, so in case  
14 that we need further assistance and to give them a heads  
15 up that somebody is going to be coming into that area  
16 where they're at.

17 So at that point pretty much everybody  
18 stops. Everybody stops, and the focus is that armed and  
19 dangerous, you know, information that we have in our  
20 computer screens.

21 So at that point when -- when that happened  
22 that I saw this armed and dangerous, I told him to keep  
23 his hands on the counter both for his safety and mine  
24 and not to do anything, not to move, not -- not to do  
25 anything, let us handle it from this point.

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1 At that point he will be approached by the  
2 officers surrounding me, the -- in front of me and  
3 behind me. They will approach, and if I -- during that  
4 time, I'm verifying the information as much information  
5 as I can from what he provided to me, which happened to  
6 be a Texas driver's license, and what it says on the  
7 screen. Everything I had in front of me matched, so I  
8 told the officers it's a match. So at that point they  
9 handcuff him, and -- and he gets escorted to the port  
10 enforcement team.

11 Q. So an armed and dangerous is a -- is a very  
12 serious alert?

13 A. Yes.

14 Q. And why is that?

15 A. Because we could be dealing with somebody who  
16 could potentially hurt us, hurt others, hurt himself  
17 because obviously he is wanted for whatever reason  
18 because we don't have enough information at that point.  
19 All we have is just his information to match, you know,  
20 whatever documents he gave us, and we don't know what  
21 this person is capable of or anything like that, so he  
22 has his very high priority, and we need to make sure to  
23 get -- have full control of that person at all -- at all  
24 times and from that point on until we resolve whether --  
25 whether it's an actual a hundred percent match or not.



1 Q. So pretty much everybody in your area drops  
2 what they're doing and pays attention to what's going on  
3 at your booth where the armed and dangerous is?

A. Yes, sir.

Q. Okay. And in this particular case, is that  
6 what happened?

A. Yes, sir.

Q. And this particular man right over here was  
9 then handcuffed by other agents; is that correct?

A. Yes, sir.

Q. Now, was he the only person handcuffed when you  
12 received an armed and dangerous alert?

A. Yes, sir.

Q. Do you handcuff everybody that comes up as an  
15 armed and dangerous?

A. Yes, sir.

Q. Is that part of your standard protocol for  
18 conducting business at the --

A. That's part of our policies and procedures that  
20 we have to follow.

Q. Every armed and dangerous gets handcuffed?

A. Yes, sir.

Q. And why is that?

A. Because they potentially could be dangerous,  
24 and we need to make sure that they are restrained right

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1 away and taken into a secure location.

Q. And are they taken to a secure location for  
3 further inspection?

A. Yes, sir.

Q. And -- because you don't get a whole lot of  
6 information on your screen at that point?

A. No, sir.

Q. But if someone -- if this -- where are all the  
9 armed and dangerous persons taken?

A. Into the port enforcement team area.

Q. Okay. So this is serious enough where they  
12 skip soft secondary and go straight to the port  
13 enforcement team?

A. Yes, sir.

Q. And back at the port enforcement team, do they  
16 have more resources to research that individual  
17 situation?

A. Yes, sir.

Q. And is that what happened in this particular  
19 case?

A. Yes, sir.

Q. Okay. Regardless of whether this Defendant had  
22 come up armed -- come up armed and dangerous, were you  
23 going to allow him to enter the United States without  
24 further inspection?  
25

1 A. No, sir.

2 Q. Why was that?

3 A. Because of the lack of documents, and he was --  
4 he was going to be referred to soft secondary,  
5 regardless.

6 Q. Now, who has the burden to show that -- that a  
7 person is -- is legally entering the United States? Is  
8 the burden on you to keep them out, or is the burden on  
9 them to prove that they are, in fact, an admissible  
10 person under the laws of the United States?

11 A. The burden is on them to prove to the officer  
12 that they are admissible into the country.

13 Q. Now, last night, did you have an occasion to  
14 watch a -- a short video clip of the Defendant entering  
15 the port area?

16 A. Yes, sir.

17 Q. And let me show you what's been marked as  
18 State's Exhibit Pretrial 16, which I can represent to  
19 you is a copy of that short video clip that you watched  
20 last night. Is it an accurate depiction of the -- of  
21 the events as they went down on December the 20th of  
22 2009?

23 A. Yes, sir.

24 MR. GILL: At this time we offer State's  
25 Pretrial 16.

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1 MR. CUMMINGS: Your Honor, I was given the  
2 opportunity to view the contents of Pretrial 16 during  
3 the break. We have no objections to the introduction of  
4 Pretrial 16 for purposes of this hearing.

5 THE COURT: 16 is admitted.

6 (State's Pretrial Exhibit No. 16 admitted)

7 MR. GILL: May we publish it, Your Honor?

8 THE COURT: You may.

9 (State's Pretrial Exhibit No. 16 published)

10 Q. (BY MR. GILL) Officer Bernal, what are we  
11 looking at here?

12 A. You're looking at the vehicle -- I'm sorry, the  
13 pedestrian primary lanes. Actually, you're looking at  
14 the tunnel way. The gentleman has just entered the  
15 indoor part of the -- part of the tunnel, and he's  
16 walking north.

17 Q. Is this the individual that you've identified  
18 earlier?

19 A. Yes, sir.

20 Q. Okay.

21 A. That's a view of the primary booths as we're  
22 looking south towards Mexico right before the travel  
23 public makes or applies for entry into the United  
24 States.

25 Q. And your booth is actually over to the far left

1 of -- of this view; is that correct?

2 A. Yes, sir.

3 Q. Okay. And you said the individual moving right there, is that the individual we've been watching?

4 A. Yes, sir.

5 Q. Now, on this view right here, is this the -- is this you?

6 A. Yes, it is.

7 Q. The booth you're working?

8 A. Yes, sir.

9 Q. And this is the Defendant that you identified in court earlier?

10 A. Yes, sir, in front --

11 Q. Standing right in front of you?

12 A. Yes, sir.

13 Q. Okay. So what are you doing at this point?

14 A. At this point I'm asking him questions like I mentioned before about, you know, because he just presented me a Texas driver's license, and asked him if he had anything else to show to me to prove that he's a U.S. citizen, which he did not have.

15 So at this point I start running him on my computer, and I'm also taking care of asking him the questions as to what he was doing in Mexico and what is he doing out here in this part of the country. At that

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1 point, you know, I'm running him and waiting to get a response from our systems.

2 Q. And as you're working, we see other people coming through the pedestrian lanes and going about their business; is that correct?

3 A. Yes, sir.

4 Now, a little before this, before the officers actually start approaching me, we have had already an answer from our systems, and the officer that was directly in front of me has come around his booth, and he's standing behind the -- the gentleman. And also another officer came from the pedestrian soft secondary area, as well as the officer to my -- in front of me to the left. So at this point I'm verifying the information that is in front of me to make sure that we do have a match.

5 Q. And we saw three -- three other officers approach from three different directions at that point; is that right?

6 A. Yes, sir.

7 Q. Is that standard procedure?

8 A. Yes, sir. And at this point I told them that we do have a match, and he has been handcuffed.

9 Q. Okay. Is this the individual right here?

10 A. Yes, sir.

1 Q. Okay. And where is he headed at this point?

2 A. He's heading to the port enforcement team.

3 Q. Okay. And I'm -- just so -- to go over this -- this view a little bit more, at the top of the -- the view here, that's the tunnel area?

4 A. Yes, sir.

5 Q. And would the soft secondary be over in this area here?

6 A. Yes, sir.

7 Q. Off to the right side?

8 A. That's correct.

9 Q. What are these two units right here?

10 A. Those are x-ray machines.

11 Q. Okay. And here, here, here, here, here, here on -- on to the right, what are all those areas?

12 A. Those are primary booths, and in between each set of primary booths, that's where the travelers will walk through.

13 Q. Okay. So under the Western Hemisphere Travel Initiative Program, an individual has to have a U.S. passport to be admitted as a U.S. citizen?

14 A. A U.S. citizen has to have a U.S. passport or a passport card.

15 Q. Okay.

16 A. To enter the United States.

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1 Q. Or -- or an enhanced driver's license?

2 A. That's correct, from the states that do provide it.

3 Q. And could they be admissible with a driver's license which was accompanied by a birth certificate showing that they were born in the United States?

4 A. That is correct.

5 Q. Okay. Other -- other than those scenarios, if they don't have any of those -- those documentation scenarios, they are not admissible into the United States; is that correct?

6 A. That is correct.

7 MR. GILL: We pass the witness.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. CUMMINGS:

11 Q. Officer Bernal, my name is Fred Cummings. We met briefly in the back, did we not?

12 A. Yes, sir.

13 Q. I just have a few questions for you.

14 You prepared a one-page report after this incident. Do you -- have you had the benefit of being able to review your report?

15 A. Yes, sir.

16 Q. Okay. According to the report that I've --

1 have been given a copy of through discovery, this  
2 particular incident that we just watched on the screen  
3 there occurred on the 20th of December 2009, according  
4 to your report, at approximately 5:48 a.m.; is that  
5 accurate?

6 A. Yes, sir.

7 Q. The video clock appears to have -- be a little  
8 bit off as far as the time. Which do we go by, your  
9 report or the -- the video?

10 A. As far as the -- the report that I submitted, I  
11 go off of that time which I will -- I will have obtained  
12 from the computer screen.

13 Q. Okay. And I don't know how far off it is. It  
14 may just be a little bit, but it seems to us in  
15 reviewing this there seems to be a small discrepancy.

16 I'm curious. You deal with thousands of  
17 people every day, yet you're able to identify my client.  
18 How are you able to identify him?

19 A. How am I able to identify him? After reviewing  
20 the video, I recognized him.

21 Q. Okay. So you had a benefit of seeing -- when  
22 you were authenticating the video that we just observed,  
23 you have compared the gentleman here in the courtroom  
24 with that video and made your identification based upon  
25 that; is that accurate?

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1 A. Yes, sir.

2 Q. Okay. Your function is -- has been very well  
3 described to us here today, so it appears that based  
4 upon your testimony, even had the armed and dangerous  
5 not come up on your screen, because of the lack of  
6 documentation, that individual who went through your  
7 checkpoint was going to be checked by someone else  
8 probably in soft secondary at the very least; is that  
9 correct?

10 A. That is correct.

11 MR. CUMMINGS: One moment, please, Your  
12 Honor.

13 Q. (BY MR. CUMMINGS) The procedure that you-all  
14 used in order to handcuff this individual, that would  
15 not have taken place had the red box A&D not have come  
16 up, correct? That's a terrible question.

17 You had -- the procedures that took place  
18 that we observed on the video were because the policy  
19 that you have in dealing with somebody that alerts A&D,  
20 armed and dangerous, correct?

21 A. Yes, sir.

22 Q. Had John Hummel come to you and merely had that  
23 Texas driver's license and nothing more, he wouldn't  
24 have necessarily been handcuffed and taken into custody.  
25 How would he had gotten from your work station to soft

1 secondary?

2 A. I would have escorted him.

3 Q. Okay. And as -- as you've already said,  
4 regardless of what happened, he was going there at the  
5 very least?

6 A. Yes, sir.

7 Q. But he would not have necessarily been  
8 handcuffed?

9 A. No, sir.

10 Q. Did you receive any other documentation from  
11 Mr. Hummel, such as a Social Security card?

12 A. No, sir.

13 Q. Would that have been satisfactory  
14 documentation?

15 A. No, sir.

16 Q. I'm just curious. A birth certificate in  
17 addition to a Texas driver's license, is that adequate  
18 anymore?

19 A. It is if they happen not to have their -- their  
20 passport as I view it, yes, and we will put in our  
21 system as being non-WHTI compliant, which is the Western  
22 Hemisphere Travel Initiative Complaint (sic).

23 Q. A&Ds, how often -- I'm sorry. You said you  
24 have done this for how many years now?

25 A. Three years, four months.

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1 Q. Three years, four months. And you're not  
2 always necessarily in the passenger area. You -- you  
3 also work vehicles and other jobs around the port,  
4 correct?

5 A. Yes, sir.

6 Q. When you -- how many A&Ds have you dealt with  
7 over the course of those three years, four months? Any  
8 idea?

9 A. How many have I had in front of me?

10 Q. Yes.

11 A. Of those A&Ds? I believe it's about eight.

12 Q. Okay.

13 A. I have assisted to many, many, many more, but  
14 as the other officers assisted to my A&D, person pop up  
15 when I run somebody, has been about it.

16 Q. The policies that you have in place, every one  
17 of those three officers that responded are armed  
18 officers?

19 A. That is correct.

20 Q. Everybody that works -- strike that.

21 Does everyone who works in the port for  
22 Customs and Border Protection wear a sidearm?

23 A. Yes, sir.

24 MR. CUMMINGS: Thank you very much,  
25 Officer.

1 Pass the witness.

2 THE COURT: Redirect?

3 MR. GILL: Thank you, Your Honor.

REDIRECT EXAMINATION

4 BY MR. GILL:

5 Q. This port enforcement business is serious  
6 business, isn't it?

7 A. Yes, sir.

8 Q. You said you've had at least eight A&Ds present  
9 themselves to you?

10 A. Yes, sir.

11 Q. You've assisted many other officers in  
12 detaining subjects that have been flagged as A&D also;  
13 is that correct?

14 A. Yes, sir.

15 Q. Have any of those incidents resulted in  
16 violence?

17 A. Yes, sir.

18 Q. Can you describe some of those incidents to the  
19 Judge, please?

20 A. Sure. The latest one we had was where my  
21 immediate supervisor was directly involved with that,  
22 Your Honor. And the gentleman did come up as an A&D,  
23 which happened to be in the vehicle primary lanes. And,  
24 of course, he's driving a vehicle. He decided he was

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1 going to take off on the officer. And by doing so, when  
2 he started taking off, in our booths we have a port  
3 runner button, and that would be considered a port  
4 runner when somebody is trying to run the port.

5 So the officer pressed it. The arms -- the  
6 wooden arms would come down, spikes strip come up from  
7 the ground to -- and pop the tires, and that individual  
8 happened to do that at that point, and when -- while  
9 doing that, he -- the -- any vehicles that have crossed  
10 the border through any of the -- either that lane or any  
11 of the other lanes would have been already traveling,  
12 and when that happens, like I said, the arms come down,  
13 the spikes go up, so those vehicles will stop. And they  
14 will be in the way of that vehicle trying to get away  
15 from us.

16 So what happened at that point, the -- the  
17 individual used his vehicle to try to force his way out  
18 of there, out of our port; and by doing so, he rammed  
19 his vehicle on the other person's vehicle, as well as  
20 trying to run -- run over other officers.

21 And at that point, whether me as an officer  
22 is in danger or another officer is in danger or the  
23 traveling public is in danger, we are allowed to use our  
24 firearm, and that's what happened just recently, and  
25 there was a shooting at the port.

1 And, you know, the -- because a vehicle

2 is -- is a deadly weapon, it could be used as a -- as a  
3 deadly weapon at that point if they're trying to make  
4 their way out of the port by ramming other vehicles  
5 or -- or trying to run over people or officers.

6 Q. Security -- the port area is a very  
7 security-conscious area, especially after 911; is that  
8 fair to say?

9 A. Yes, sir.

10 Q. In the vehicle we saw and also in the  
11 photographs, in the primary booth area, there's some  
12 glass?

13 A. Yes, sir.

14 Q. And is that bulletproof glass?

15 A. Yes, it is, sir.

16 Q. And what's the purpose of that bulletproof  
17 glass?

18 A. To help us survive getting shot at, which it  
19 does happen, and it has happened. If somebody's trying  
20 to get away from either of us or the officer behind us  
21 or vice-versa, so that not more people get hurt or  
22 killed in the process of -- if we have somebody who's  
23 dangerous.

24 Q. So would it be a fair statement that the  
25 policies and directives you operate under are written so

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1 that you and the general public can be secure?

2 A. Yes, sir.

3 Q. When an individual presents himself for  
4 admission, such as this Defendant over here did, and  
5 present to you a, for example in this case, Texas  
6 driver's license, while you're interviewing that person  
7 at the primary booth, do you compare that individual to  
8 the photograph on the picture identification they've  
9 provided to you?

10 A. Yes, sir.

11 Q. Is that part of -- of your security procedure?

12 A. Yes, sir.

13 Q. And is that part of your citizenship  
14 verification procedure?

15 A. Yes, sir.

16 Q. And do you do that on a normal basis?

17 A. Yes, sir.

18 Q. Did you do that on this occasion?

19 A. Yes, sir.

20 MR. GILL: We'll pass the witness.

21 THE COURT: Any further questions?

22 MR. CUMMINGS: Yes, Your Honor.

RECROSS-EXAMINATION

23 BY MR. CUMMINGS:

24 Q. Officer Bernal, the individual that presented  
25



1 himself to you on the video there, he didn't give you  
2 any problem whatsoever, did he?

3 A. No, sir.

4 Q. When you told him to leave his hands on the  
5 counter, he did so, correct?

6 A. Yes, he did comply.

7 Q. He didn't resist your assisting officers one  
8 bit, did he?

9 A. No, sir.

10 MR. CUMMINGS: Thank you, sir.

11 THE COURT: May the witness be excused?

12 MR. GILL: Nothing further from the State.

13 MR. CUMMINGS: Yes, Your Honor.

14 THE COURT: Officer Bernal, you're excused.

15 You may step down. Thank you.

16 THE WITNESS: Thank you, Your Honor.

17 (Witness retires)

18 THE COURT: Call your next witness.

19 MR. GILL: Ernesto Enriquez.

20 (Witness enters courtroom)

21 THE COURT: Mr. Enriquez?

22 THE WITNESS: Yes, sir.

23 (Witness sworn)

24 THE COURT: Please be seated, sir. You may  
25 proceed when you're ready.

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1 ERNESTO ENRIQUEZ,  
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GILL:

5 Q. Tell us all your name, please, sir.

6 A. My name is Ernesto P. Enriquez.

7 Q. And how are you employed or occupied?

8 A. I'm an officer of the Homeland Security  
9 Department under United States Custom and Border  
10 Protection.

11 Q. How long have you been employed with Customs  
12 and Border Protection?

13 A. I've been employed for eight years. This will  
14 be my ninth year.

15 Q. Did you undergo a -- a period of training to  
16 qualify you to hold that job?

17 A. Yes, sir.

18 Q. Would you describe to the Judge what training  
19 you've undergone?

20 A. I went to immigration officer training, basic  
21 training at Glynco, Georgia, for six weeks, and I've  
22 been trained for firearm training -- firearms training,  
23 law enforcement training and immigration training.

24 Q. And do you undergo periodic retraining from  
25 time to time?

1 A. Yes, sir.

2 Q. Before your employment as a border protection  
3 officer, how were you employed?

4 A. I was -- I did 20 years in the United -- United  
5 States Navy.

6 Q. And what assignment in the Navy?

7 A. I was a mechanic and manager.

8 Q. Were you at work at your job as a border  
9 protection officer on January the 20 -- I'm sorry,  
10 December the 20th of 2009?

11 A. Yes, sir.

12 Q. And where were you assigned on that particular  
13 day?

14 A. I was assigned as a secondary inspector or  
15 secondary officer at the port enforcement unit at the  
16 San Ysidro Port of Entry.

17 Q. Is -- is that a -- pretty much a permanent  
18 assignment for you?

19 A. Yes, sir.

20 Q. And what are -- what are your job duties there?

21 A. My job -- one of my jobs is to take  
22 fingerprints of the travelers that are referred to from  
23 primary inspect -- inspection area.

24 Q. Let's look at that diagram over to your left  
25 for just a second. Do you recognize that as being a --

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1 a rough diagram of the -- the port area where you  
2 worked?

3 A. Yes, sir.

4 Q. And if we heard testimony earlier that an  
5 individual applying for admission comes in through this  
6 way and presents themselves down here to an officer at  
7 the -- at the primary booths, if an individual does not  
8 satisfy the officer working the primary booth, is that  
9 one of the -- one of the individuals that might be  
10 escorted to you for further processing?

11 A. Yes, sir.

12 Q. And we have a green arrow down -- or they  
13 brought over this direction to you to the left of --

14 A. To the left of the red arrow, sir.

15 Q. Yeah, okay. Right over here. So your office  
16 area is over -- over in this area; is that correct?

17 A. That's correct, sir.

18 Q. And what -- what do you have there that allows  
19 you to do your job?

20 A. Can you repeat the question, sir?

21 Q. What do you have -- what do you have in front  
22 of you that allows you to do your job, that assists you  
23 in doing your job?

24 A. The system I have in front of me is what they  
25 call the integrated automatic -- automated fingerprint

1 system, which is a computer-based taking the images of  
2 the prints of the individual that's from the primary  
3 area.

Q. So at the point an individual is in front of  
you, they're undergoing a -- a further inspection to  
6 determine their admissibility?

7 A. Yes, sir.

8 Q. Or determine whether or not they're wanted by  
9 another agency --

10 A. Yes, sir.

11 Q. -- for some reason.

12 Do you have individuals that are brought to  
13 you that are -- that are wanted by -- on warrants by  
14 other agencies?

15 A. Yes, sir.

16 Q. Federal agencies as well as state agencies?

17 A. That's correct, sir.

18 Q. Do people come in front of you for further  
19 inspection that are -- have been flagged as missing  
20 persons?

21 A. Yes, sir.

22 Q. Do you get persons that have been flagged as --  
23 as armed and dangerous?

24 A. Yes, sir.

25 Q. So you see pretty much everybody, every type of

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1 individual that has a difficulty entering the United  
2 States?

3 A. Yes, sir.

4 Q. And do you see quite a large number of people  
5 during a given day?

6 A. Yes, sir.

7 Q. What happens when a -- when a person that has  
8 been flagged as armed and dangerous is brought to your  
9 area?

10 A. When they are brought to the area, they are  
11 only brought down with a handcuff on for officer safety,  
12 and if it -- if it's -- once they're brought in the  
13 secondary, which is my area, they take the cuffs off,  
14 and -- and that's when I do the -- take their  
15 fingerprints and verify the identity of the person  
16 that's being brought from the primary.

17 Q. Between the time they're -- they're brought  
18 from primary and -- and unhandcuffed and turned over to  
19 you, do they undergo a -- a search to make sure they're  
20 not armed in any way?

21 A. That's correct, sir.

22 Q. And that's part of your procedures and  
23 directives?

24 A. Yes, sir.

25 Q. Okay. And -- and that's for your protection as

1 well as their protection?

2 A. Yes, sir.

3 Q. Okay. Now, on December the 20th of 2009, did  
4 you have an individual by the name of John William  
5 Hummel --

6 A. Yes, sir.

7 Q. -- that was brought to you after having been  
8 flagged on the primary booth as armed and dangerous?

9 A. Yes, sir.

10 Q. Do you see that individual in the courtroom  
11 today?

12 A. Yes, sir.

13 Q. Okay. Would you please describe what he's  
14 wearing -- where he is in the courtroom and what he's  
15 wearing today?

16 A. He is wearing a dark -- semi-dark green shirt.

17 Q. Is he the -- the third person over here to my  
18 left?

19 A. That's correct, sir.

20 MR. GILL: Can the record reflect he's  
21 identified the Defendant?

22 THE COURT: The record will so reflect.

23 Q. (BY MR. GILL) And for what reason was  
24 Mr. Hummel presented to you on December 20th of 2009?

25 A. He was presented as a missing person lookout,

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1 possibly armed and dangerous.

2 Q. What does a missing person lookout mean?

3 A. A missing person is -- is a lookout from  
4 National Crime Information Center from a different  
5 agency or different country -- county or state that's  
6 indicating that such person is reported as missing.

7 Q. And is some -- is that something that you  
8 investigate?

9 A. Yes, that's correct, sir.

10 Q. And you -- you make attempts -- do you make  
11 attempts to verify that information through the  
12 originating agency?

13 A. Yes, sir.

14 Q. Now, you said one of the first things you do  
15 is -- is fingerprint the individual?

16 A. That's correct, sir.

17 Q. Did you fingerprint Mr. Hummel?

18 A. Yes, I did.

19 Q. And what system did you query when you first  
20 ran Mr. Hummel's fingerprints?

21 A. The first system I queried is the National  
22 Crime Information Center, which is the -- and also the  
23 Treasury Enforcement Communication System.

24 Q. Did that reveal any information to you?

25 A. Yes, sir.

1 Q. What was that?  
 2 A. That the person is reported as missing.  
 3 Q. Okay. And do you recall what time of the  
 morning you ran his prints through that system?  
 4 A. I believe three after 6:00 -- 6:00 in the  
 5 morning.  
 6 Q. Okay. 6:03 a.m.?  
 7 A. 6:03 a.m., that's correct, sir.  
 8 Q. Did that -- did that query confirm that he was  
 9 a United States citizen?  
 10 A. No, sir.  
 11 Q. So that was still under investigation?  
 12 A. That's correct, sir.  
 13 Q. Did you then do an additional query?  
 14 A. Yes, I did.  
 15 Q. On which system?  
 16 A. I reaffirm on National Crime Information Center  
 17 and the Treasury Communications System.  
 18 Q. Is that known as TECS?  
 19 A. Yes, sir.  
 20 Q. The Treasury Enforcement Communications System?  
 21 A. Yes, sir.  
 22 Q. And what did that query reveal to you?  
 23 A. The query revealed that Mr. Hummel is -- is --  
 24 is on the lookout for a missing person.

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1 Q. Now, do your policies and directives require  
 2 you to notify a supervisor at this point?  
 3 A. No, sir.  
 4 Q. Okay. What -- what do your policies and  
 5 directives require you to do?  
 6 A. The policy, if the person is confirmed --  
 7 confirmed as a wanted person, I have to refer them to  
 8 our prosecution unit.  
 9 Q. Okay. If they're a missing person, you confirm  
 10 that through the originating agency?  
 11 A. That's correct, sir.  
 12 Q. So in this instance, did you make any telephone  
 13 calls?  
 14 A. Yes, sir, I did.  
 15 Q. Who did you call?  
 16 A. I called the Kennedale Police Department. I  
 17 had contact with an officer named Renee.  
 18 THE REPORTER: I'm sorry?  
 19 THE WITNESS: Renee.  
 20 Q. (BY MR. GILL) Do you recall what time you made  
 the telephone call to -- your first telephone call to  
 21 Kennedale Police Department?  
 22 A. I believe 50 minutes after 6:00 o'clock in the  
 23 morning.  
 24 Q. So 6:50 a.m.?

1 A. Yes, sir.  
 2 Q. And what did you inform the officer at the  
 3 Kennedale Police Department?  
 4 A. I informed -- I informed her to verify that the  
 5 person is -- have a lookout as a missing individual or a  
 6 missing person from -- from that Kennedale county police  
 7 department.  
 8 Q. And did you --  
 9 THE COURT: Let me interrupt you for a  
 10 moment. 6:50 a.m., what time? What time zone?  
 11 THE WITNESS: It's Pacific Time.  
 12 THE COURT: That is Pacific?  
 13 THE WITNESS: Pacific.  
 14 Q. (BY MR. GILL) So all the times I've discussed  
 15 with you has been Pacific Time --  
 16 A. Yes, sir.  
 17 Q. -- is that correct?  
 18 THE COURT: Thank you.  
 19 Q. (BY MR. GILL) Did you inform the officer at  
 20 Kennedale the name and date of birth of the individual  
 21 that you had in front of you?  
 22 A. Yes, sir.  
 23 Q. Okay. Did you have a conversation with  
 24 Mr. Hummel while you were conducting your conversation?  
 25 A. A brief conversation, sir.

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1 Q. And what did you -- did you ask him something?  
 2 A. Yes. I asked him a question.  
 3 Q. What did you ask him?  
 4 A. I asked him the -- what was his purpose of  
 5 going to Mexico or purpose of his visit to Mexico.  
 6 Q. And is that part of your normal investigation  
 7 of an individual applying for admission?  
 8 A. Yes, sir.  
 9 Q. You want to know their purpose for being out of  
 10 the country?  
 11 A. Yes, sir.  
 12 Q. What was his reply?  
 13 A. His replied, I went to Tijuana to get some  
 14 weeds (sic).  
 15 Q. Now, while you were working on verifying this  
 16 information with the Defendant, did you get a call back  
 17 from the officer at the Kennedale Police Department?  
 18 A. That's correct, sir, yes, sir.  
 19 Q. And what did the officer inform you at that  
 20 time?  
 21 A. The officer told me to hold the person because  
 22 he has a warrant -- a warrant over at the Kennedale  
 23 Police Department.  
 24 Q. Okay. Had you been able to confirm a warrant  
 25 through any of the systems that you queried?

1 A. No, sir.

2 Q. And what did you do with regard to that  
3 information?

4 A. After I received that information from Officer  
5 Renee of the Kennedale Police Department, I turned over  
6 the case to our prosecution unit to Officer Kandal.

7 MR. GILL: We'll pass the witness.

8 THE COURT: Cross-examination?

9 MR. MOORE: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. MOORE:

12 Q. Let me -- Officer Enriquez, my name is Larry  
13 Moore. I'm one of the lawyers representing Mr. Hummel.  
14 Let me visit with you a minute first about this diagram.

15 Okay. You said that the -- the area where  
16 you work is off the diagram here to the left of this red  
17 arrow?

18 A. Yes, sir.

19 Q. What is it called? What is it actually called?

20 A. Port enforcement secured area.

21 Q. Okay. So it's a -- it's a secured area.

22 It's -- people coming and going through these gates  
23 aren't allowed to go back there; is that right?

24 A. They're not allowed to go back there.

25 Q. He was -- he would have been brought back there

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1 by some of the port enforcement officers; is that  
2 correct?

3 A. Yes, sir.

4 Q. Okay. How many people work in the area where  
5 you work?

6 A. I don't recall the day that we worked how many  
7 people work in that area. It's for security purposes.  
8 It's supposed -- it's supposed to be more than three  
9 officers.

10 Q. More than three officers?

11 A. Yes, sir.

12 Q. Okay. And so if -- if -- the way I understand  
13 it, if -- if somebody is sent back here to y'all, it's  
14 because something has been flagged through as they may  
15 try to make entry through the primary area, for y'all to  
16 make further verification of what the situation is with  
17 this person; is that right?

18 A. Yes, sir.

19 Q. And you try to do that by, I think you said,  
20 taking his fingerprints and comparing them or running  
21 them through the database?

22 A. Yes, sir.

23 Q. Okay. The database that you compare the  
24 fingerprints to, it is the NCIC database; is that  
25 correct?

1 A. Supposed to be the FBI Federal Bureau of

2 Investigation database.

3 Q. The FBI database, and it also -- does it also  
4 include -- I think you said there was something having  
5 to do with the Treasury Department?

6 A. Treasury Information Communication System.

7 Q. Okay. When you got the call -- when you got  
8 the information back from the initial inquiry, I believe  
9 you indicated that the missing persons report popped up  
10 that -- that we've been talking about that he was  
11 possibly armed and dangerous and that he was missing,  
12 the Kennedale report?

13 A. Yes.

14 Q. Okay. And did it also verify that he had a  
15 military background, or did you get any other  
16 identifying information?

17 A. No, sir.

18 Q. Do you normally get that kind of information  
19 when you make those kind of inquiries for somebody  
20 that's been in the service? Will it usually pop up on  
21 your system?

22 A. I haven't come across to that, sir.

23 Q. Okay. So it doesn't access -- if it's  
24 accessing FBI records, it's not accessing military  
25 people's --

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1 A. I don't -- I don't know, sir.

2 Q. You don't ever remember seeing that?

3 A. I don't remember seeing that.

4 Q. All you remember with regard to this guy was  
5 the missing persons --

6 A. That's correct.

7 Q. -- missing person information?

8 What is your protocol or procedure -- well,  
9 let me back up because I think you told us your -- your  
10 protocol, when it's a missing persons inquiry or  
11 information, is to contact the initiating agency?

12 A. That's correct, sir.

13 Q. All right.

14 A. It's called the ORI.

15 Q. If it -- if it comes up that there's an actual  
16 warrant or a want for a -- a hold for the legal system,  
17 is there a different process that you follow?

18 A. Well, I -- when there's -- if it's a warrant --  
19 a warrant confirmation on it, we refer them to our  
20 prosecution units.

21 Q. Okay.

22 A. With warrant -- wanted and warrant unit, they  
23 process it.

24 Q. So had -- had the information come up and said  
25 there's a warrant out of -- of Texas for Mr. Hummel at



1 that point, you would have sent him right on to the  
2 prosecution unit to make further inquiry about the  
3 warrant?

A. Yes, sir.

Q. But because it came up as a missing person -- a  
6 missing persons entry, it kind of falls to you to  
7 inquire of -- of the originating agency itself; is that  
8 right?

A. Yes, sir.

Q. Now, the -- the missing persons information  
11 that you received indicated in it, did it not, that you  
12 weren't to detain him or arrest him, that they were just  
13 interested in -- in knowing -- be notified about where  
14 he was; is that correct?

A. Yes, sir.

Q. All right. When you contacted Investigator  
17 Renee, you did -- you did it by telephone; is that  
18 right?

A. Yes, sir.

Q. And I say, Investigator Renee. Somebody named  
21 Renee at the police department there in Kennedale, okay?

A. Yes, sir.

Q. Is that correct?

A. Yes, that's correct.

Q. All right. And I think you said that when you

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1 o'clock in the morning Pacific Time.

2 Q. So Pacific Time 6:03, you call Kennedale Police  
3 Department, and they tell you we'll get back with you --

4 A. Yes, sir.

5 Q. -- right?

6 So she acknowledged, didn't she, that, yes,  
7 we generated that missing persons report regarding  
8 Mr. Hummel?

9 A. I -- I don't remember that.

10 Q. You don't remember that?

11 A. No.

12 Q. Okay. She said she'll get back to you,  
13 whatever --

14 A. She's going to get back with me.

15 THE REPORTER: I'm sorry, sir. I didn't  
16 hear your answer.

17 THE WITNESS: She's going to get back with  
18 me. That's what she said.

19 Q. (BY MR. MOORE) Okay. And then about how long,  
20 40 to 45 minutes later, that she called you back?

21 A. Yes, sir.

22 Q. And it's the same person, Ms. Renee?

23 A. Ms. Renee called me back.

24 Q. And that's when she tells you, okay, hold him  
25 for the warrant?

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1 talked to Ms. Renee, was it in that first conversation  
2 that she told you that they had a warrant and they  
3 wanted to hold him for the warrant, or was it -- did she  
4 have to get back to you? How did that work?

5 A. I -- she said on -- from the first telephone  
6 conversation, she told me that she going to get back --  
7 she's going to call me back.

8 Q. Okay. So what do you do? In that situation,  
9 you got Mr. Hummel sitting there in your office, or some  
10 area, I take it. Is -- where would he be sitting? Is  
11 it --

12 A. He's sitting right where the -- the waiting  
13 chairs are.

14 Q. Okay.

15 A. And he's right in front of me.

16 Q. So everybody is just kind of sitting over there  
17 and sitting over here?

18 A. Yes, sir.

19 Q. Until we get -- do you recall how long it was  
20 before you got -- you got the phone call back from  
21 Ms. Renee?

22 A. About between 45 and 50 minutes, roughly.

23 Q. Do you recall what time you made your initial  
24 phone call to the Kennedale Police Department?

25 A. Yes, sir. It's three minutes after 6:00

1 A. That's what she told me.

2 Q. And it's an arson warrant; is that right? Do  
3 you recall what she told you it was a warrant for?

4 A. It's an arson warrant, yes. That's what she  
5 told me.

6 Q. All right. So at that time, do you then make  
7 an effort to verify the warrant on NCIC since it hadn't  
8 been there before, or do you just send him on to the  
9 next guy?

10 A. I just sent him to the next guy.

11 Q. So you -- you -- you made inquiry of -- of NCIC  
12 and whatever else, the Treasury Department. They  
13 haven't indicated there's any warrant. Ms. Renee calls  
14 you back 45 minutes after the first phone call and says,  
15 hold him, we got a warrant. Then you send him on to  
16 the --

17 A. To the next officer.

18 Q. To the next officer.

19 And who -- and you told us what that is  
20 called, the security enforcement something?

21 A. It's what you call the prosecution unit, the  
22 San Ysidro Criminal -- Criminal Enforcement Unit.

23 Q. Okay. Criminal Enforcement Unit.

24 Did you make another phone call after that  
25 second phone call? Did you make a -- or get a third

1 phone call with Ms. Renee?

2 A. I get -- I get a third phone call.

3 Q. Okay. And at that point did you tell her how  
4 you referred it to that prosecution unit or whatever it  
5 is?

6 A. I do not recall, sir.

7 Q. Okay. Do you recall telling her that Officer  
8 Kandal was going to be handling it and that he would be  
9 talking to her or anything like that?

10 A. I remember that, sir.

11 Q. Okay. So that's what you told her?

12 A. I told her.

13 Q. Do you recall whether or not he actually got on  
14 the phone during that conversation?

15 A. Say again?

16 Q. Do you recall whether or not Officer Kandal  
17 actually got on that -- on the phone with her that same  
18 conversation?

19 A. I don't know, sir. I don't remember.

20 Q. Would you have just transferred the call to  
21 him, or how would that have worked?

22 A. I -- what I -- what I did is call Officer  
23 Kandal and told him that officer -- or Agent -- Agent  
24 Renee called back with me and she said that hold the  
25 person.

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1 Q. Okay.

2 A. He has a warrant for arson.

3 Q. All right. Now, when he -- when you're  
4 referring to the prosecution people, Officer Kandal and  
5 his bunch, does he stay there with you, or where do  
6 they -- where does he go?

7 A. He stayed -- he stayed in my area.

8 Q. He stayed in your area?

9 A. Until he comes down and I turn it over to him  
10 physically.

11 Q. Okay. What happened -- how long did it take  
12 for Officer Kandal to come down?

13 A. I don't remember. I don't recall, sir.

14 Q. Okay. But it was sometime after that second  
15 phone call, which would have been about 6:45 or a little  
16 before 7:00 in the morning?

17 A. After 7:00 o'clock, probably.

18 Q. So it would have been sometime after 7:00 that  
19 Officer Kandal came down.

20 Is he taken -- was he taken from your area  
21 at that point?

22 A. I don't remember. I don't recall, sir.

23 Q. Okay. Is it typical, whenever you've got  
24 information now, that, yes, there is a warrant for him,  
25 would he had been rehandcuffed at that point, or would

1 he have been -- what would have happened?

2 A. No, sir. Typically, we -- we wait until the  
3 prosecution officer or the CEU officer to come down and  
4 reinterview the individual.

5 Q. Okay. Had that not -- had there not been a  
6 missing persons report pop up, when you did the ten --  
7 the -- the computer inquiry regarding the fingerprints,  
8 it's my understanding that -- that the documents that  
9 Mr. Hummel had presented to the primary officer for  
10 entry was a Texas driver's license; is that right?

11 A. I believe so, sir.

12 Q. Okay. What happened? How do you verify -- I  
13 mean, when he's sent back here to you to verify this  
14 missing persons report or something, had -- had that not  
15 panned out, had -- had you found -- called and that had  
16 been withdrawn or something like that, how would you  
17 verify his citizenship to send him on into the country?

18 A. We -- the way -- the way it work on -- on  
19 the -- on that kind of situation is refer the person to  
20 the supervisor if I cannot verify his citizenship.

21 Q. Okay. And what do you look for when you  
22 send -- when you -- when you try to verify his  
23 citizenship through his fingerprints, how are you  
24 attempting to verify? What do you need to find in order  
25 to verify it?

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1 A. We -- typically we call the -- we call the  
2 other agency to verify the -- the birth of the  
3 individual, refer to our office.

4 Q. Okay. So like if he had a Texas driver's  
5 license, you call the Texas Department of Public Safety,  
6 or would you call -- how -- how would you verify that  
7 information?

8 A. We -- we either call Texas for a record and  
9 verify where he was born.

10 Q. Okay.

11 A. To verify his citizenship.

12 Q. Okay. The information that was provided to you  
13 in the NCIC missing persons report is in regard -- in  
14 regard to date of birth and all that information. It  
15 was the same as what appeared on his driver's license --

16 A. Yes, sir.

17 Q. -- was it not?

18 Okay. So that information at least was  
19 consistent?

20 A. Yes, sir.

21 Q. Did -- did you -- did he -- or did you ask him  
22 whether or not he had any other documentation of his  
23 citizenship at that point?

24 A. No, I did not, sir.

25 Q. Okay. Once you found the missing persons hit,

1 he was going on to somebody else, anyway?

2 A. That's correct, sir.

3 Q. And then what -- I mean, excuse me.

4 Had they not told you that there was a  
5 warrant for him, what would have happened at that point?

6 Had they said, you know, we just -- missing persons  
7 report, thank you very much, we didn't want him arrested

8 or detained, that's what we put in the initial inquiry,  
9 what would y'all have done with him at that point?

10 A. We still -- we still have to verify his status,  
11 his citizenship.

12 Q. Okay. So you just had to verify he was an  
13 American citizen, and he'd be on his way?

14 A. Yes, sir.

15 Q. It was the information from the Kennedale  
16 Police Department that they had a warrant that kicked  
17 him over to the prosecution enforcement people, whatever  
18 it is?

19 A. Yes, sir.

20 Q. Okay. Did you -- did you do a report in -- in  
21 connection with your involvement in all this?

22 A. Yes, sir. It's the standard procedure to make  
23 a report -- make a report.

24 Q. Was it that little one-page report?

25 A. Yes, sir.

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1 Q. Did you do -- did you look at anything else  
2 prior to coming to testify today --

3 A. No, sir.

4 Q. -- in connection with this?

5 Okay. Let me ask you a question, and I  
6 just -- this is information that's been provided to us  
7 by the State. Is that your writing on here?

8 A. Yes, sir.

9 Q. Okay. So that -- that -- that page is the --  
10 let me just go ahead and mark it.

11 MR. MOORE: Thank you.

12 Q. (BY MR. MOORE) Let me hand you what's been  
13 marked for identification purposes as Defendant's  
14 Pretrial Exhibit No. 1. Tell me what that is, please.

15 A. This is a NIC -- NCIC NLETS direct record  
16 display.

17 Q. Okay. So that's what you actually pulled up on  
18 your -- or gotten on your computer from the inquiry that  
19 you made?

20 A. Yes, sir.

21 Q. Okay. As a result of -- of that inquiry coming  
22 up with that information, that's when you made the phone  
23 call to Ms. Renee; is that correct?

24 A. Yes, sir.

25 Q. Okay. And you actually indicated on -- in the

1 notes in there information regarding that phone call and  
2 all that jazz?

3 A. Yes, sir.

4 Q. Okay. That's your handwriting?

5 A. That's my handwriting.

6 Q. You did that that day, I take it?

7 A. Yes, sir.

8 Q. What is that 06:50?

9 A. That's the time, sir.

10 Q. That's the time that you would have had that  
11 conversation or made that contact?

12 A. That's the second -- I believe it's the second  
13 phone call when she returned the call.

14 MR. MOORE: We'd offer Defendant's Pretrial  
15 No. 1.

16 THE COURT: Any objection?

17 MR. GILL: No objection.

18 THE COURT: Admitted.

19 (Defendant's Pretrial Exhibit

20 No. 1 admitted)

21 Q. (BY MR. MOORE) This -- this -- let me just get  
22 you to look at this -- at this page right here. Is that  
23 a copy of the report that you did?

24 A. Yes, sir.

25 Q. Okay. And in that report, do you actually

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1 document, do you not, that Officer Renee confirmed that  
2 he had an outstanding warrant; is that right?

3 A. That's what she told me.

4 Q. Okay. Thank you very much, Mr. Enriquez.

5 MR. MOORE: I pass the witness, Judge.

6 THE COURT: Redirect?

7 MR. GILL: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. GILL:

10 Q. Okay. Officer Enriquez, just a couple of --  
11 couple of things.

12 When you were speaking with the officer  
13 from the Kennedale Police Department on the phone, she  
14 only gave you verbal confirmation of a warrant?

15 A. That's correct, sir.

16 Q. Were you ever able to electronically confirm  
17 the existence of a warrant?

18 A. No, sir.

19 Q. And before you could definitely say there's a  
20 warrant, don't you have to have electronic confirmation  
21 of that through one of your databases?

22 A. Yes, sir.

23 Q. Okay. And at your particular work station, in  
24 order to -- to verify information, you query a number of  
25 different databases in order to accomplish your

1 purposes; is that correct?

2 A. That's correct, sir.

3 Q. Through all of your confirmation -- through all  
4 of your work that morning, did you ever confirm that  
5 Mr. Hummel over here was a United States citizen?

6 A. No, sir.

7 Q. So that is -- that is a matter that was still  
8 outstanding at the time he left you?

9 A. That's correct, sir.

10 Q. Now, based upon your initial report -- or the  
11 report that you wrote, your report states that you began  
12 your procedure with Mr. Hummel at 6:03 a.m.?

13 A. Yes, sir.

14 Q. When you began -- when you -- when he  
15 approached your -- your station and you took his  
16 fingerprints on the IAFIS system, I-A-F-I-S; is that  
17 correct?

18 A. That's correct, sir.

19 Q. None of the report indicates that at 6:50, you  
20 made your first contact with the ORI, Kennedale Police  
21 Department.

22 A. Yes, sir.

23 Q. And there was a period of time after that that  
24 you got the confirmation -- the verbal confirmation back  
25 from Ms. Renee at the Kennedale Police Department?

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1 A. Yes, sir.

2 Q. And you said that was somewhere around 40 to 45  
3 minutes later?

4 A. Yes, sir.

5 Q. So these investigations that you conduct take  
6 some time?

7 A. Yes, sir.

8 Q. Okay.

9 MR. GILL: Pass the witness.

10 MR. MOORE: One question, Judge.

11 RECROSS-EXAMINATION

12 BY MR. MOORE:

13 Q. When you got at 6:50 or whatever, right about  
14 that time, when you had got the information -- the  
15 verbal information from Ms. Renee that there was an  
16 outstanding warrant for him, you didn't -- you weren't  
17 making any more efforts at that point to try to verify  
18 that he was a citizen, I take it?

19 A. No, sir.

20 Q. No. You just referred him over to the  
21 prosecution guy, and they were going to take care of him  
22 from that point on because he had that warrant; is that  
23 right?

24 A. I turned him over to the prosecution unit.

25 MR. MOORE: Thank you.

1 THE COURT: I have a question -- or I'll

2 invite either counsel to ask the question -- but on the  
3 NCIC reporting where it has the miscellaneous comments,  
4 is that binding or controlling on the part of the U.S.  
5 border patrol to follow those requests, or may they just  
6 look at those and advise them at will and act on their  
7 own initiative?

8 You can ask that question if you'd like.

9 Q. (BY MR. MOORE) On the little NCIC return that  
10 you got back -- let me show it to you since we're asking  
11 about it.

12 Okay. I think what he's referring to is  
13 these comments here. You know, they've got  
14 miscellaneous comments --

15 A. Uh-huh.

16 Q. -- where they say that -- that, you know, this  
17 is law enforcement sensitive, the subject's possibly a  
18 mentally unstable person, he's of interest in a homicide  
19 case, considered armed and dangerous, approach with  
20 caution. It says he has a military background, but it  
21 also says, do not arrest or detain based on this record.

22 What -- what does that mean to you or how  
23 does -- how do y'all handle something like that when it  
24 tells you don't arrest him --

25 A. We -- based on this information, we do not

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1 arrest or detain, is what this (sic), sir.

2 Q. Okay. All you did was try to verify --

3 A. Verify.

4 Q. -- from them that, hey, we did what you said,  
5 let us know?

6 A. Yes.

7 Q. You got him, you did that, and they tell you  
8 you got a warrant?

9 A. Yes, sir.

10 Q. All right.

11 MR. MOORE: I think that's all I have,  
12 Judge.

13 THE COURT: Mr. Gill, do you have any other  
14 questions?

15 MR. GILL: We do not, Your Honor.

16 THE COURT: All right. Thank you.

17 May Officer Enriquez be excused?

18 MR. MOORE: Yes.

19 MR. GILL: Yes.

20 THE COURT: Officer, you may step down.

21 Thank you.

22 THE WITNESS: You're welcome.

23 (Witness retires)

24 THE COURT: Gentlemen, what's your

25 pleasure? You want to persist, or do you want to stop?

1 MR. GILL: We would not get through with  
2 another witness today anyway, and I understand we have  
3 some child care issues.

MR. MOORE: I've got another matter I need  
to attend to.

6 THE COURT: All right. We'll be in recess.  
7 Let me ask both of you, if we continue to get started at  
8 9:00 o'clock, do you think we're going to be done by  
9 Friday?

10 (Discussion off the record)

11 THE COURT: We will resume at 9:00 a.m.  
12 tomorrow. Thank you.

13 (Proceedings adjourned at 5:06 p.m.)  
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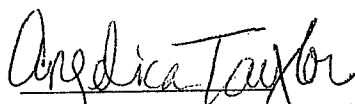
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1 THE STATE OF TEXAS )  
2 COUNTY OF TARRANT )

3 I, Angelica Taylor, Official Court Reporter  
4 in and for the 432nd Judicial District Court of Tarrant  
5 County, State of Texas, do hereby certify that the above  
6 and foregoing contains a true and correct transcription  
7 of all portions of evidence and other proceedings  
8 requested in writing by counsel for the parties to be  
9 included in this volume of the Reporter's Record, in the  
10 above-styled and -numbered cause, all of which occurred  
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's  
13 Record of the proceedings truly and correctly reflects  
14 the exhibits, if any, admitted by the respective  
15 parties.

16 WITNESS MY OFFICIAL HAND this the 25th day  
17 of January, 2012.  
18  
19  
20  
21



22 ANGELICA TAYLOR, TEXAS CSR NO. 7180  
23 Cert Exp. Date: 12/31/2013  
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